139-19

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 245. 24

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY, APPELLANT,

vs.

CHARLES W. GREENALGH AND JAMES GREENALGH.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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a United States Circuit Court, District of Minnesota. In Equity.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, Appellant,
vs.
CHARLES W. GREENALGH and JAMES GREENALGH, Appellees.

Return to the U. S. Supreme Court.

S. U. Pinney, R. B. Galusha, and George B. Young, solicitors and of counsel for appellants; James B. Beals, solicitor and of counsel for the appellee and for the State of Minnesota.

1 In the Circuit Court of the United States for the District of Minnesota. In Equity.

To the honorable the judges of the circuit court of the United States for the district of Minnesota:

The Saint Paul, Minneapolis and Manitoba Railway Company, a corporation created and existing under and by virtue of the laws of the State of Minnesota, brings this its bill of complaint against Charles W. Greenalgh and James Greenalgh, of county of Polk and State of Minnesota, each of whom are citizens of the State of Minnesota; and thereupon your orator complains and says:

Grant of March 3, 1857.

That by section one of an act of Congress entitled "An act making a grant of lands to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State," approved March 3, 1857, there was then granted to the Territory of Minnesota for the purpose of aiding in the constructing of railroads from Stillwater, by way of Saint Paul and Saint Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via Saint Cloud and Crow Wing to the navigable waters of the Red River of the North, at such point as the Legislature of said Territory might determine, from Saint Paul and from Saint Anthony, via Minneapolis, to a convenient point of junction west of the Mississippi to the southern boundary of the Territory in the direction of the mouth of the Big Sioux river, with a branch via Faribault to the north line of the State of Iowa, west of range sixteen; from Winona, via Saint Peter, to a point on the Big Sioux river south of the forty-fifth parallel of the north latitude; also from La Cresent, via Target Lake, up the valley of Root river to a point of junction with the last-mentioned road, east of range seventeen—every alternate section of land designated by odd numbers, six sections in width, on each side of each said roads and branches; but in case it should appear that the United States had, when the lines or routes of said roads and

branches should be definitely fixed, sold any sections or any parts thereof, granted as aforesaid, or that the right of pre-emption had attached to the same, then it should be lawful for any agent or agents appointed by the Governor of said Territory or future State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified so much land in alternate sections or parts of sections as should be equal to such lands as the United States had sold or otherwise appropriated or to which the rights of pre-emption had attached as aforesaid; which lands (thus selected in lieu of those sold and to which pre-emption rights had attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid) should be held by the Territory or future State of Minnesota for the use and purpose aforesaid: Provided, That the land to be so located should in no case be further than fifteen miles from the lines of said roads or branches and selected for and on account of each of said roads or branches: Provided further, That the lands thereby
2 granted for and on account of said roads and branches, severally, should be exclusively applied in the construction of that road for and on account of which such lands were thereby granted and should be disposed of only as the work progressed, and that the same should be applied to no other purpose whatsoever: And provided further, That any and all lands theretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or for any other purpose whatsoever be, and the same were thereby, reserved to the United States from the operation of such act, except so far as it might be found necessary to locate the routes of said railroads and branches through such reserved lands, in which case the right of way only should be granted, subject to the approval of the President of the United States; that in and by section two of said act it was further enacted that the sections and parts of sections of lands which by such grants should remain to the United States, within six miles on each side of said roads and branches, should not be sold for less than double the minimum price of the public lands when sold, nor should any of said lands become subject to private entry until the same should have been first offered at public sale at the increased price; that in and by section three of said act it was further enacted that the said lands by said act granted to said Territory or future State should be subject to the future disposal of the Legislature thereof for the purposes in said act expressed and no other, and that the said railroads and branches should be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States; that in and by section four of said act it was further enacted that the land by said act granted to said Territory or future State should be disposed of by said Territory or future State only in the manner following—that is to say, that a quantity of land not exceeding one hundred and twenty sections for each of said roads and branches

and included within a continuous length of twenty miles of each of said roads and branches might be sold; and when the Governor of said Territory or future State should certify to the Secretary of the Interior that any twenty continuous miles of any of said roads or branches were completed, then another quantity of land by said act granted, not to exceed one hundred and twenty sections for each of said roads and branches having twenty continuous miles completed as aforesaid and included within a continuous length of twenty miles of each of such roads or branches might be sold, and so, from time to time, until said roads and branches should be completed, and if any of said roads or branches was not completed within ten years no further sale should be made, and that the lands unsold should revert to the United States.

Territorial act of May 22, 1857, creating the M. & P. R. R. Co.

And your orator further states and shows that the Legislative Assembly of the said Territory of Minnesota in and by an act entitled "An act to execute the trust created by an act of Congress entitled 'An act making a grant of land to the Territory of Minnesota in alternate sections to aid in the construction of certain railroads in said Territory, and granting public lands in alternate sections to the State of Alabama to aid in the construction of a certain railroad in said State and granting certain lands to railroad companies therein named," approved May 22, 1857, created and declared certain persons named in said act a body politic and corporate, by the name and style of the Minnesota and Pacific Railroad Company, and with the powers, rights, and franchises in said act specified, with the power, among other things, to survey, locate, construct, complete, alter, change the location of, reconstruct, maintain, and operate a railroad with one or more tracks or lines of rails on such route, and with such alignment and graduation as such company might think proper, from Stillwater, by way of St. Paul and St. Anthony, via Minneapolis, to the town of Breckenridge, on the Sioux Wood river, with a branch from St. Anthony via Anoka, St. Cloud, and Crow Wing, to St. Vincent, near the mouth of the Pembina river, the said railroad and branch being one of the railroads and branches specially mentioned in said act of Congress of March 3, 1857; and for the purpose of aiding in the construction of said railroad and branch all the interest and estate, present and prospective, of said Territory and of the future State which should succeed to it in or to any or all the lands granted by the Government of the United States to the Territory of Minnesota for the purpose of aiding in the construction of a railroad from Stillwater, by way of St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via St. Cloud and Crow Wing, to the navigable waters of the Red River of the North, to the point thereinbefore mentioned, agreeably to the terms of said act of Congress, together with all and singular the rights, privileges, and immunities conferred or intended to be conferred by said act of Congress, were thereby granted to said company, conditioned that said land should be exclusively applied to the construction of that road

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for which it was granted: And provided, That said lands should vest in said company in the manner following: Whenever twenty or more continuous miles of said road should have been located the Governor of the Territory or future State should certify the same to the Secretary of the Interior, and thereupon the title to one hundred and twenty sections of said lands should vest in said company, and when twenty continuous miles of said road should have been completed so as to admit of running regular trains on the same the Governor should certify the same to the Secretary of the Interior, and thereupon a further quantity of one hundred and twenty sections of said lands should vest in said company until said roads should be completed, and that it should be the duty of the Governor so to certify to the Secretary of the Interior whenever any such twenty miles should be completed so as to admit of running regular trains of cars over the same, and the Governor should, in his official capacity and on behalf of the Territory or State and under the great seal thereof, execute and deliver to the said company, whenever it should, by virtue of the provisions of said territorial act, be entitled to any of said lands, a deed in fee simple of any and all of the lands to which said company should be entitled; that the location and designation of the route and line of said railroad and branch should be made by said company and reported to the Governor from time to time; that the said Minnesota and Pacific Railroad Company in and by said act was expressly authorized and empowered in its corporate capacity to borrow money from any person or persons, corporation or body politic of any kind, and for any rate of interest which might be agreed upon by and between said company and any person of whom such loan might be obtained, any law on the subject of usury of said Territory or future State or any State where such transaction might be made to the contrary notwithstanding, and to make, execute, and deliver all necessary writings, notes, bonds, mortgages, or other obligations and securities in amount and kind as might be deemed expedient by said company in consideration of any such loan or in discharge of any liabilities which it might incur in the construction, repair, equipment, or operation of said road, and in its corporate capacity to make, execute, issue, and deliver its bonds or obligations in any amount which the directors thereof might deem necessary or expedient, and to prescribe the sum or sums for which each of such bonds should be issued, the time or times and place or places when and where the principal and interest of the same should be payable, the person or persons, trustee or trustees, to whom or to which they should be payable, and whether payable to order or bearer or how otherwise negotiable, the rates of interest which said bonds should bear, and the manner and form in which the interest coupons annexed to them should be executed; and, for the purpose of securing the payment of all or any of such bonds, in its corporate capacity to make, execute, and deliver one or more mortgages or deeds of trust upon the whole or any part of its railroad or branches, constructed or authorized to be constructed, and of the estate granted by said act, and any and all other of its estate, real, personal, or mixed, in possession or expectancy, and in

and by such mortgage or deed of trust to confer upon the trustee or mortgagee full and ample powers to enter into and upon and take possession of, have, use, and employ, or to sell or dispose of, the whole or any part of said railroad and branches and all corporate and other franchies, rights, and privileges of said company, and in case of any such sale to grant and convey to the party or parties acquiring title under such sale, and their associates, successors, and assigns, all and the same rights, privileges, grants, franchises, immunities, and advantages in and by such mortgage or deed of trust enumerated and conveyed which belonged to or were enjoyed by said company as fully and absolutely in every respect as said company, its bondholders, officers, and agents, might or could have done if such sale or foreclosure had not taken place; that the directors of said company were in and by said act authorized and empowered to prescribe by resolution, to be by them adopted, all matters relating to the form and terms of any such mortgage or deed of trust and of its execution and delivery, and that said company, in and by said act, was authorized and empowered, through its agents or brokers or otherwise, at any place to sell, loan, pledge, hypothecate or otherwise dispose of any or all of the aforesaid bonds, so as aforesaid authorized to be issued, at par or at any price less than par, and for such sum or sums and on such terms as to the said company, its agents or brokers, should appear most for its interest.

And your orator further shows that the said company, after the passage of said act of said Legislative Assembly, and on the
4 25th day of May, A. D. 1857, duly organized, and after such organization, by a resolution duly passed by its board of directors, accepted said act; and a copy of such resolution, certified by the president and secretary of said company under its corporate seal, was on the same day duly filed in the office of the secretary of said Territory.

Acceptance of M. & P. R. R. Co. of act of May 22, 1857.

And your orator further shows that the said Minnesota and Pacific Railroad Company entered upon the execution of the trust by said act committed to it, and commenced the survey, location, and construction of the railroad and branch which by said act it was authorized to build *to build* and operate and located the line of its main road from Stillwater by way of St. Paul and St. Anthony to a point between the foot of Big Stone Lake and the mouth of the Sioux Wood river, and filed a map thereof with resolutions adopting the same in the office of the Governor of the said Territory of Minnesota on the 12th day of November, A. D. 1857, and on or about the date last aforesaid said map and location of said main line terminating at Breckenridge were filed in the General Land Office, at Washington, and were thereupon approved by the Secretary of the Interior; that a map of the definite location of the said branch line via Anoka, St. Cloud, and Crow Wing to Vincent, near the mouth of the Pembina river, duly adopted by said company, was in like manner filed in the office of the Governor of said Territory and in the General Land Office, at Washington, and was duly approved by the Secre-

Location and construction of roads.

tary of the Interior on or about the date last aforesaid; and that said company did, in fact, thereafter actually construct and complete, ready for placing the superstructure thereon, about sixty miles of such railroad, and did, in fact, receive Minnesote State railroad bonds isssued and delivered to it by the Governor of the State of Minnesota to the amount of not less than six hundred thousand dollars, under and pursuant to the provisions of section ten of article nine of the constitution of said State, as amended on the 15th day of April, A. D. 1858, which said bonds were so issued and delivered to said company upon evidence produced and securities given by said company, as prescribed and required in and by said section ten of article nine as amended as aforesaid, and in and by an act of the Legislature of said State entitled "An act concerning land grant railroads," approved on the 12th day of August, A. D. 1858; but that no part of said railroad had been actually completed with the cars running thereon at the time of the passage of the act of said Legislature, approved March 6, A. D. 1860, entitled "An act in addition to an act entitled 'An act concerning land grant railroads,' passed August 25, A. D. 1858;" that after the passage of said act last mentioned, default having been made by said Minnesota and Pacific Railroad Company in the payment of interest on the first-mortgage bonds of said company, issued to and held by the said State of Minnesota and the trustees under the deed of trust or mortgage executed by said company upon all its rights, franchises, and property given to secure said bonds, having neglected to foreclose the same, the Governor of said State did proceed to foreclose, and did, in fact, foreclose such deed of trust in conformity with the provisions thereof and in accordance with the statute in such case made and provided, and upon the sale of the said property, rights, and franchises covered by and embraced in said trust deed upon and under such foreclosure thereof made on or about the 23d day of June, A. D. 1860, did bid off and purchase the same for and on behalf of said State of Minnesota, whereby all and singular the property, rights, and franchises of the said Minnesota and Pacific Railroad Company became and were vested in the said State; that the said Minnesota and Pacific Railroad Company, notwithstanding it afterwards duly accepted that certain act of the Legislature of Minnesota entitled "An act to facilitate the construction of the Minnesota and Pacific railroad," approved March 8, A. D. 1861, and paid the costs and expenses and made the deposit prescribed in the fourth section of said act, wholly failed to construct, put into operation, and equip for business any part or portion of its said railroad, so that at the time of the passage of the act of said Legislature of March 10, A. D. 1862, hereinafter mentioned, no part or portion whatever thereof had been constructed, put into operation, or equipped for business.

Trust deed by company.

Foreclosure of same for the State of Minnesota.

And your orator further shows that by an act of the Legislature

State act granting lands, etc., of M. & M. R. R. Co. to St. P. & P. R. R. Co.

of the State of Minnesota entitled "An act to facilitate the construction of the Minnesota and Pacific railroad and to amend and continue the act of incorporation relating thereto," approved March 10, 1862, it was provided and declared, among other things, that all the rights, benefits, property, privileges, franchises, and interests of the Minnesota and Pacific Railroad Company acquired by the State of Minnesota by virtue of any acts, deeds, agreement, or thing by the said company theretofore done or suffered, or by virtue of any law of the State or the constitution thereof or of the former Territory of Minnesota, or by reason of any sale of the same or any part thereof by the Governor of the State on the twenty-third day of June, eighteen hundred and sixty, and bid in and purchased for the benefit of the State, were thereby granted and transferred to Dwight Woodbury, Henry T. Wells, R. R. Nelson, Edmund Rice, Edwin A. C. Hatch, James E. Thompson, Leander Gorton, Richard Chute, and William Lee, their associates and successors, for the purpose and on the terms and conditions thereafter in said act provided, free and clear of all claims or liens thereon and free from all liens and claims by or to the State of Minnesota, except as thereinafter provided; that all the rights, privileges, franchises, lands, property, and interest granted by the Territory of Minnesota to the Minnesota and Pacific Railroad Company by the act of said Territory approved May 22, A. D. 1857, were thereby continued and granted to and vested in the said Dwight Woodbury, Henry T. Wells, R. R. Nelson, Edmund Rice, Edwin A. C. Hatch, James E. Thompson, Leander Gorton, Richard Chute, and William Lee and their associates and successors, with all the immunities, rights, property, benefits, and privileges which the said Minnesota and Pacific Railroad Company had or might or could have by reason of the passage of said act, free and clear of all claims and liens of the State of Minnesota against the same, except such as were retained by the provisions of said act, and that the said persons thereinbefore named and their associates and successors should thereafter be known as the St. Paul and Pacific Railroad Company, and by that name might sue and be sued and have and exercise all the powers, rights, and privileges which theretofore pertained to the said The Minnesota and Pacific Railroad Company by the act thereinbefore referred to or by any other act or law, and that the persons thereinbefore named should be directors of the said The St. Paul and Pacific Railroad Company for one year and until others should be elected or appointed in their places; that the provisions in said act contained were upon the condition that the said The St. Paul and Pacific Railroad Company should complete and put into operation and fully equip for business that portion of said main line of said road extending from Saint Paul to Saint Anthony on or before the first day of September next thereafter, and that portion of the branch line of said road extending from Saint Anthony to Anoka by the first day of January, eighteen hundred and sixty-four, and to Saint Cloud by the first day of January, eighteen hundred and sixty-five, and those portions of the main

line of said road extending from Stillwater to Saint Paul and from Saint Anthony by way of Minneapolis westwardly to the west line of range thirty within one year from the expiration of the time last aforesaid, and to Little Falls by the first day of January, eighteen hundred and sixty-six, and thereafter to continue to construct and put into operation, fully equipped for business, the said road or branch at the rate of thirty miles annually, and all of said road or branch on or before the third day of March, eighteen hundred and sixty-seven; that in and by section six of said act it was enacted that for the purpose of aiding in the construction of the Saint Paul and Pacific railroad and the branch thereof all the interest of the State, present and prospective, in and to any and all the lands granted by Congress to the Territory of Minnesota for the purpose of aiding in the construction of a road from Stillwater, by way of St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of (Big) Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, agreeably to the terms of the act of Congress approved March 3, A. D. 1857, together with all and singular the rights, privileges, and immunities conferred and intended to be conferred by said act of Congress, were thereby granted to said St. Paul and Pacific Railroad Company, conditioned that said land should be applied to the construction and equipment of said road and for no other purpose whatever, and that whenever said company should actually complete that portion of the road between St. Paul and St. Anthony so that regular trains of cars should be running thereon, and not before, the Governor should certify the same to the Secretary of the Interior, and thereupon the title to one hundred and twenty sections of land should vest in said company, and that when twenty continuous miles of said road should be completed and regular trains running thereon the title to a further quantity of one hundred and twenty sections of land should vest in said company; that whenever said company should actually complete twenty continuous miles of said road from Minneapolis westwardly so as to admit of the running of regular trains of cars on the same the Governor should certify the same to the Secretary of the Interior, and thereupon a further quantity of one hundred and twenty sections of said lands should vest in the said company, and that so on, as often as any further twenty continuous miles of said road should be completed so as to admit of the running of regular trains of cars thereon, the Governor should in like manner certify the same to the Secretary of the Interior, and a further quantity of one hundred and twenty sections of said land should vest in said company, and that it should be the duty of the Governor whenever said road should be completed between St. Paul and St. Anthony, in his official capacity and on behalf of the State, to convey to said company one hundred and twenty sections of land, and that whenever any further twenty continuous miles of said road or its branches should be completed and in operation the Governor should in like manner convey a further quantity of one hundred and twenty sections of land, and so on, as often as any further twenty continuous miles of

said road or its branches should be completed, should in like manner convey to said company a further quantity of one hundred and twenty sections of land until there should be conveyed to said company all the lands to which they should be entitled according to the terms and provisions aforesaid: Provided, That upon the written authority of said company filed with the State treasurer said lands, when the company should be entitled thereto, might be conveyed by the State directly to the assigns of said company.

Joint resolution authorizing change of branch lines.

And your orator further shows that by a joint resolution of the Congress of the United States to authorize the State of Minnesota to change the line of certain branch railroads in said State and for other purposes, approved July 12, A. D. 1862, it was recited that by an act of Congress approved March 3, A. D. 1857, there was granted to the Territory of Minnesota lands to aid in the construction of a railroad from Stillwater, via St. Paul and St. Anthony, to a point between the foot of Big Stone Lake and the mouth of Sioux Wood river, with a branch via St. Cloud and Crow Wing to the navigable waters of the Red River of the North, the northern terminus of which was fixed by the Legislature of said Territory at St. Vincent, and that it was believed that the public interests required a change of location of a part of said branch. It was therefore resolved and declared that in lieu of that part of the railroad grant to Minnesota Territory by said act of Congress of March 3, A. D. 1857, which extended northwesterly from the intersection of the tenth standard parallel with the fourth guide meridian there should be granted to the State of Minnesota the alternate sections within six-mile limits of such new branch line of route as the authorities of the State might designate, having a southwestern terminus at any point on the existing line between the falls of St. Anthony and Crow Wing, and extending in a northeasterly direction to the waters of Lake Superior, with a right of indemnity between the fifteen-mile limits thereof, provided such resolution should take effect from the filing in the General Land Office of the acceptance by the authorities aforesaid of such substitution; whereupon the land north of the intersection aforesaid in the grant as authorized by said act of March 3, A. D. 1857, being by said acceptance disincumbered of the railroad grant, should be dealt with as other public lands of the United States.

State act accepting provisions of joint resolution.

And your orator further shows that the Legislature of said State of Minnesota, by an act entitled "An act to authorize the St. Paul and Pacific Railroad Company to construct a branch road to Lake Superior," approved March 6, A. D. 1863, *it was* enacted that the provisions of said joint resolution of Congress approved July 12, A. D. 1862, were accepted, and the Saint Paul and Pacific Railroad Company was thereby authorized and empowered to survey, locate, construct, and maintain, in conformity with the said joint resolution of Congress, within the State of Minnesota a new branch railroad, having its southwestern terminus at or above some point opposite the town of Saint Cloud, upon the existing branch line of said "The

St. Paul and Pacific railroad," and extending from thence in a northeasterly direction, by such route as they might select, to the navigable waters of Lake Superior at or near the mouth of Pigeon river, by way of Duluth, and the said "The Saint Paul and Pacific Railroad Company" should be entitled to have, receive, and to hold, and there was thereby granted to it, all the lands, benefits, and privileges granted and conferred to and upon the State of Minnesota in and by said joint resolution of Congress, and that the said company might construct and operate the line of road therein provided for in accordance with the terms and provisions of the act of the Legislature of said State approved March 10, A. D. 1862, and that for the purpose of constructing said branch railroad the said company should have and might exercise all the rights, immunities, privileges, and franchises conferred in and by said last-named act and the act to which it was amendatory, so far as the same might be applicable: Provided, That the grants and franchises thereby conferred or extended were made upon the express condition that they should in nowise inure to the line of road then located or constructed, or to be located or constructed thereafter, under the
7 powers of the act of incorporation of the said Saint Paul and Pacific Railroad Company, and also that no act or deed of said company should be competent to embarrass or incumber the grants or franchises thereby made for any purpose connected with the line or lines of road contemplated by the then existing charter of the said railroad company.

State act relating to disposition of grant and for agreement with holders of special stock.

And your orator further shows that by an act of the Legislature of the State of Minnesota entitled "An act to amend the charter of the St. Paul and Pacific Railroad Company," approved February 6, A. D. 1864, it was, among other things, provided that whenever the St. Paul and Pacific Railroad Company should complete ten consecutive miles of the main line of its railroad from some point on the then constructed line in St. Anthony by the way of Minneapolis westerly, with regular trains running thereon, the Governor should certify the same to the Secretary of the Interior, and thereupon a further quantity of one hundred and twenty sections should vest in said company, and so on, as often as any further twenty continuous miles should be completed, with regular trains running thereon, the Governor should in like manner certify the same to the Secretary of the Interior, and a further quantity of one hundred and twenty sections of land should vest in said company; that the St. Paul and Pacific Railroad Company should have the right to relocate the lines of its road and branches so as to run and construct the main line from St. Anthony, by way of Minneapolis, to any point between the foot of Big Stone Lake and the mouth of Sioux Wood river and the branch from St. Anthony to the Red River of the North, so as to run and construct the same from some point at or near St. Cloud to any point in the international boundary near the Red River of the North, and that it should not be required of said company to construct or maintain the said branch road by way of Crow Wing; that the said company should

complete those portions of its road from Stillwater to St. Paul and from St. Anthony by the way of Minneapolis westerly to the distance of twenty miles within two years, and the remaining portion of the main line and that part of the branch line from St. Cloud to the Red River of the North within five years, and that there should be no forfeiture of any of the lands, property, privileges, rights, or franchises of the said company for a failure to complete the same or any part thereof prior to the times above specified, and that the said company was thereby authorized and empowered to extend, survey, locate, construct, maintain, and operate its road from some point at or above St. Cloud to the westerly end of Lake Superior, and for the purpose of extending, locating, constructing, and operating the same, that said company should have and might exercise all the rights, immunities, privileges, and franchises conferred in and by its charter and which were applicable to any other portion of its road or branch road, and that the said St. Paul and Pacific Railroad Company should have power to create and issue in such manner and on such terms as it might deem expedient on [one] or more classes of preferred stock and special stock, and to make such agreement as it might deem proper with the respective holders thereof as to the dividends thereon and the securities for such dividends, and to make such agreements as it might deem proper with the holders of any such special stock for the appropriation of the net earnings of any portion of the railroad which it might construct or otherwise acquire to the payment of dividends on such special stock as might be issued in respect thereto, which appropriation as made by such agreement should be effectual to secure to the said and future holders of such stock the application of such net earnings as in the said agreement provided against any future act of the company or any of its general liabilities, and that said company might make such agreement as it might deem proper with the holders of any such special stock as to the administration of the portion of said railroad and the land grant appertaining thereto to which said stock might pertain, and for the separate organization of the holders of such special stock for the purpose of that administration and enabling them or directors chosen by them, separately or in conjunction with the other directors, to exercise in respect to the portion of the road to which such special stock might pertain all the powers of the company, subject to the provisions of such agreement when made and entered into.

Organization of holders of special stock as the First Division of the St. P. & P. R. R. Co.

And your orator further shows that on or about the 6th day of February, A. D. 1864, preferred or special stock having been theretofore duly issued on the line of the road of the said St. Paul and Pacific Railroad Company from St. Paul to Watab to the amount of thirty-five hundred shares, and on the line of its said road from St. Anthony to the point between the foot of the Big Stone Lake and the mouth of the Sioux Wood river to a very large amount, the holders thereof, under and in pursuance of the aforesaid act of the Legislature, met at St. Paul, in said State, on or about said 6th day of February, A. D. 1864, and organized

a corporation known as and called the First Division of the St. Paul and Pacific Railroad Company, and elected the proper officers therefor, whereby a corporation was organized known as and called the First Division of the St. Paul and Pacific Railroad Company, owning and controlling the said line of railroad from St. Paul to Watab, and also that known as the main line from St. Anthony to the point between the foot of the Big Stone Lake and the mouth of the Sioux Wood river, together with all the rights, privileges, and franchises belonging thereto or in any manner connected therewith; all of which said acts and doings were ratified and confirmed by the act of the Legislature hereinafter set forth, approved February 6, A. D. 1866; that on said 6th day of February, A. D. 1864, only that portion of said railroad extending from St. Paul by way of St. Anthony to Anoka, a distance of about thirty miles, had then been completed and equipped, with the cars running thereon; that previous to said organization of the First Division of the St. Paul and Pacific Railroad Company the said St. Paul and Pacific Railroad Company duly created and issued to one E. B. Litchfield the said preferred and special stock hereinbefore mentioned pertaining to that portion of the lines or road of said St. Paul and Pacific Railroad Company which extended from St. Paul to Watab and from St. Anthony to Breckenridge, and thereupon entered into an agreement with him, the said Litchfield, whereby said company transferred to him as the owner and holder of such preferred and special stock the said lines of road to which it so pertained, together with the franchises and lands appertaining thereto, under which agreement and in accordance with its provisions the said Litchfield, with sundry other persons, to whom he had assigned and transferred shares of the said preferred and special stock, on the same day formed and organized the said First Division of the St. Paul and Pacific Railroad Company, and that a report of such organization, with a copy of such agreement, was thereupon duly filed in the office of the secretary of state of the State of Minnesota on the 4th day of May, A. D. 1864, and to which when produced your orator begs leave to refer for greater certainty.

Act extending time for completion of road.

And your orator further shows that the Legislature of the State of Minnesota, by an act entitled "An act to aid and facilitate the completion of the St. Paul and Pacific railroad and branches," approved March 2, A. D. 1865, enacted, among other things, that the time for the grading and completion of the respective portions of the line of railroad of the St. Paul and Pacific Railroad Company as then fixed by law should be extended for the period of two years, and that all the rights, privileges, franchises, and lands conferred by the act of the Legislature of the State of Minnesota approved March 10, A. D. 1862, should be restored, released, and granted to said company free and clear of all claim and lien of the said State thereto, and that the said company should have the right and power to extend and construct said road from Winona to La Crescent: Provided, and said act was upon the express condition, that said company should complete and equip that portion of the road from Elk river to St. Cloud,

with the cars running thereon, on or before the first day of September, A. D. 1866, and from thence in a northerly direction to St. Vincent, on the international boundary line, within the time limited by law; also that the said company should build that portion of said road theretofore known as the St. Paul and Winona Branch by the way of and through the following cities and villages, to wit: Hastings, Red Wing, Lake City, Wabasha, and Minneiska: And provided, That said company should, on or about the first day of July, A. D. 1866, remove its track from the line through First street, in St. Anthony, to a line not nearer the Mississippi river than Sixth street, except that it might depart from the above requirement so far as might be necessary in the extension and construction of its road across the Mississippi river; that any and all additional grants of land made prior to the passage of such act or which might thereafter be made by the Congress of the United States to the State of Minnesota for the purpose of aiding in the construction of the lines of railroad or any portion of them authorized to be constructed by the St. Paul and Pacific Railroad Company should enure to the benefit of said company, and said lands and the present and future interest of the State in or to them were thereby granted and assigned unto the said company upon the same terms and conditions as the lands theretofore granted for the same purpose, together with the conditions contained in the said act of Congress donating the same, and that the title of all lands theretofore or thereafter granted by Congress to said State for the purposes aforesaid should vest in the company at the time and upon the terms prescribed by said act or acts of Congress making the grant, and that it should be the
9 duty of the Governor, on behalf of the State, to convey to said company the lands so granted according to the terms and provisions contained in the act or acts aforesaid, and that said act should take effect from and after its passage, and that the same and all acts relating to the St. Paul and Pacific Railroad Company and to the lines authorized to be constructed by them were thereby declared to be public acts; and your orator shows that at the time of the passage of said act a bill was pending in the Congress of the United States for an increase or enlargement of said land grant hereinbefore mentioned, and which it was then believed would pass, and which on the next day was, in fact, passed and became operative as next hereinafter set forth, and the benefit of which the said State desired and intended to accept, and did, in fact, thereafter accept.

Increase of grant, March 3, 1865.

And your orator further states and shows that by an act of Congress of the United States entitled "An act extending the time for the completion of certain land-grant railroads in the States of Minnesota and Iowa and for other purposes," approved March 3, A. D. 1865, the quantity of lands granted to the State of Minnesota to aid in the construction of certain railroads in said State by the act of March 3, A. D. 1857, aforesaid was increased to ten sections per mile for each of said railroads and branches, subject to any and all limitations contained in said act and subsequent acts and as thereinafter provided; that in and by section two of said

act the first proviso in the first section of said act of March 3, A. D. 1857, was so amended as to provide that the land to be so located should in no case be further than twenty miles from the lines of said road and branches to aid in the construction of each of which said grant was made, and that said lands granted should in all cases be indicated by the Secretary of the Interior; that in and by section three of said act it was enacted that any and all lands theretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or other purpose whatever were thereby reserved and excepted from the operation of said act, except so far as it might be found necessary to locate the route of said road through such reserved lands, in which case the right of way should be granted, subject to the approval of the President of the United States, provided that any lands which had been granted to the Territory or State of Minnesota for the purpose of aiding in the construction of any railroad, which lands might be located within the limits of such extension of said grant or grants should be deducted from the full quantity of lands thereby granted, and that any lands which had been so granted should be strictly applied in accordance with the terms and conditions of said act or acts, unless subsequently modified by law; that by section four of said act it was further enacted that the sections and parts of sections of land which by said acts and such grant should remain to the United States within ten miles on each side of said roads and branches should not be sold for less than double the minimum price of public lands when sold, nor should any of such lands become subject to sale at private entry until the same should have been first offered at public sale to the highest bidder at or above the minimum price aforesaid, provided that actual *bona fide* settlers under the pre-emption laws of the United States might, after the proof of settlement, improvement, and occupation, as then provided by law, purchase the same at the increased minimum price, and provided also that settlers under the provisions of the homestead law who should comply with the terms and requirements of said acts should be entitled to patents for an amount not exceeding eighty acres each, anything in the said act to the contrary notwithstanding; that in and by section five of said act it was further enacted that the lands thereby granted should be subject to the disposal of the Legislature of the State of Minnesota for the purposes aforesaid and no other, and that such railroads and branches should be and remain public highways for the use of the Government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States; that in and by section six of said act it was enacted that the lands theretofore and by said act granted to said Territory or State of Minnesota should be disposed of by said State for the purpose aforesaid only and in manner following, namely: When the Governor of said State should certify to the Secretary of the Interior that any section of ten consecutive miles of said road was completed in a good, substantial, and workmanlike manner as a first-class railroad, and the said Secretary should be satisfied that the said State had complied in good

faith with such requirement, the Secretary of the Interior should issue to said State patents for all the lands granted and selected as aforesaid, not exceeding ten sections per mile, situated opposite to and within a limit of twenty miles of the line of said section of road thus completed, extending along the whole length of said completed section of ten miles of road and no further; and when the Governor of said State should certify to the Secretary of the Interior, and the Secretary should be satisfied, that another section, ten consecutive miles in extent, connecting with the preceding section or with some other first-class railroad which might be at the time in successful operation, was completed as aforesaid the said Secretary of the Interior should issue to the said State patents for all the lands granted and situated opposite to and within the limit of twenty miles of the line of said completed section of road or roads and extending the length of said section and no further, not exceeding ten sections per mile, for all that part of said road thus completed under the provisions of said act and the act of March 3, A. D. 1857, and so from time to time until said road and branches should be completed, and that when the Governor of said State should so certify and the Secretary of the Interior should be satisfied that the whole of any one of said roads and branches was completed in a good, substantial, and workmanlike manner as a first-class railroad the said Secretary of the Interior should issue to said State patents for all lands granted for and on account of said completed road and branches in said act situated within the said limits of twenty miles from the line thereof throughout the entire length of said road and branches, provided that nothing therein contained should interfere with any existing rights acquired under any law of Congress theretofore enacted making grants of land to the State of Minnesota to aid in the construction of railroads, and provided, that no land should be granted and conveyed to said State under the provisions of said act on account of the construction of any railroad or part thereof that had been constructed under the provisions of any other act, at the date of the passage of this act, and adopted as part of the line of railroad provided for in this act; and provided further, that said lands, granted by this or prior acts, should not in any manner be disposed of except as the same should be patented under the provisions of this act; and should the State fail to complete any one of said roads or branches within eight years after the passage of this act then the said lands undisposed of as aforesaid, granted on account of said roads or branches, should revert to the United States; that in and by section nine of said act it was enacted that the provisions of said act should also be construed so as to apply and extend to that portion of the line authorized to be vacated by the joint resolution approved July twelfth, eighteen hundred and sixty-two, entitled "A joint resolution authorizing the State of Minnesota to change the line of certain branch railroads in said State, and for other purposes," notwithstanding the vacation thereof by said State, as though said resolution had not passed, and also to the line adopted by said State in lieu of the portion of the line so vacated; that at the time of the passage of said act no part of the main

line of said road from St. Paul to Breckenridge had been built or constructed, and that only that portion of the branch line lying between St. Paul and Elk river, a distance of thirty-eight miles, had then been built and completed.

State act confirming organizat'n, etc., of First Division of St. P. & P. R. R. Co.

And your orator further shows that the Legislature of the State of Minnesota in and by an act entitled "An act to legalize and confirm the organization, acts, and proceedings of the First Division of the Saint Paul and Pacific Railroad Company, and in relation to the character and powers of said company," approved February 6, A. D. 1866, it was enacted that the holders of the preferred stock and special stock issued by the Saint Paul and Pacific Railroad Company, under the authority of an act of the Legislature of the State of Minnesota, approved on the 6th day of February, A. D. 1864, and as recited in the agreement made on the same day, under said act between the said company and E. B. Litchfield, of which agreement a copy, with a report of the organization thereunder, was filed in the office of the secretary of State on the 4th day of May, A. D. 1864, under and pursuant to an act of the said Legislature, approved March 4, A. D. 1864, should be, and were thereby, authorized to use, possess, enjoy, and exercise all the rights, benefits, privileges, property, franchises, powers, and interests of the Saint Paul and Pacific Railroad Company as a body corporate, belonging or pertaining to that portion of the lines or road of said company which extends from St. Paul to Watab, Benton county, including all the lands granted by Congress to aid in the construction of the road of said company, and which belong or pertain to such portion of said road, and all the rights, benefits, privileges, property, franchises, powers, and interests of said company as a body corporate as aforesaid, belonging or pertaining to that portion of the lines or road of said company which extends from St. Anthony to a point between the foot of Big Stone Lake and the mouth of the Sioux Wood river, including all the lands granted by Congress to aid in the construction of that portion of the lines or road of said company last above mentioned, subject only to the provisions of said agreement, and subject to all the conditions and limitations respecting the construction and completion of said road or of any
11 part thereof imposed by existing laws: Provided, That nothing in said agreement or the acts of said company in pursuance thereof affecting in any manner any of the lands donated by Congress for the purpose of constructing or appertaining to that portion of the St. Paul and Pacific railroad extending from Stillwater to St. Paul should be deemed to be ratified or confirmed by said act, but that all the lands belonging and originally designed for and appropriated to the construction of said road from Stillwater to St. Paul should remain irrevocably dedicated thereto, and the acceptance by the First Division of the St. Paul and Pacific Railroad Company of said act, either by resolution or by acting under it, should be deemed a full release to the State of Minnesota of any and all rights which said First Division of the St. Paul and Pacific Railroad Company might have acquired in or to any of the lands

by virtue of such agreement; that the holders of the aforesaid preferred stock and special stock, their successors and assigns, should be and were authorized to use, possess, enjoy, and exercise all and singular the said rights, benefits, privileges, property, franchises, powers, and interests under the corporate name and style of the First Division of the St. Paul and Pacific Railroad Company, and by that name should have perpetual succession, and should have and enjoy all the powers, privileges, franchises, and immunities incident to a corporation, and might acquire by purchase or otherwise and hold, convey, sell, and lease property and estates, either real, personal, or mixed; make, have, and use a common seal, and alter and renew the same at pleasure; sue and be sued, plead and be impleaded, answer and be answered, defend and be defended against, contract and be contracted with, and generally do and perform all and every act and thing which might be necessary or requisite to the full enjoyment and exercise of all and singular the privileges, franchises, powers, rights, benefits, property, and interests by said act and said agreement transferred to or conferred upon them; and that the organization of the holders of said preferred and special stock, under the name of the First Division of the St. Paul and Pacific Railroad Company, in pursuance of the act of the Legislature and of the agreement thereinbefore referred to, and all the acts and proceedings of said organization not contrary to law nor to the terms of said agreement, were thereby sanctioned, confirmed, and legalized; that by reason of the premises and of said agreement the said First Division of the St. Paul and Pacific Railroad Company, upon its organization as aforesaid, became entitled to and vested with all and singular the corporate powers and franchises, and all the rights, privileges, property, benefits, immunities, and lands of the said St. Paul and Pacific Railroad Company belonging or pertaining to the line of railroad in said agreement specified, to wit, the said lines extending, the one from St. Paul by way of St. Anthony to Watab, and the other from said St. Anthony to Breckenridge and which were commonly known as and called the first branch line and the other the main line of the said St. Paul and Pacific Railroad Company, and did thereupon proceed to construct, complete, and equip, and did fully construct, complete, and equip, the said lines from St. Paul to Watab and from St. Anthony to Breckenridge, except about four miles on the northerly end of said line from St. Paul to Watab, the main line from St. Anthony to Breckenridge having been fully completed to the approval and acceptance of the State of Minnesota and the United States on or about the 25th day of October, A. D. 1871, and that portion from St. Paul to Watab, except four miles on the north end thereof as aforesaid, having been fully completed to the approval and satisfaction of the State of Minnesota and the United States on or about the 1st day of December, A. D. 1867; that after the organization of the First Division of the St. Paul and Pacific Railroad Company it owned, operated, and controlled the said road and controlled and managed the land grants appertaining thereto under and by virtue of the act of Congress of March 3, A. D. 1857, and the said act of

Congress of March 3, A. D. 1865, and the aforesaid legislation of the State of Minnesota in relation thereto, and that, before any of the foreclosures hereinafter mentioned, the greater part of all the lands granted by the United States as aforesaid to aid in the construction of the lines of road so owned by the said First Division of the St. Paul and Pacific Railroad Company had, under the agreement and legislation hereinbefore mentioned, passed to and become vested in fee simple in the said First Division of the St. Paul and Pacific Railroad Company, and said company had become legally entitled to all of said lands, subject, however, as to the portion of said lines and lands covered by the several deeds of trust hereinafter mentioned, executed before the 6th day of February, A. D. 1864, to the lien of such deeds, respectively, all of which, with the bonds thereby secured, the said First Division of the St. Paul and Pacific Railroad Company assumed and undertook to pay off and discharge.

12 And your orator further shows that, prior to the organization of the said First Division of the St. Paul and Pacific Railroad Company, an agreement had been made between the St. Paul and Pacific Railroad Company and the corporators of the Stillwater and St. Paul Railroad Company in and by which the said St. Paul and Pacific Railroad Company agreed to relinquish to the said Stillwater and St. Paul Railroad Company that part of the main line of its road between Stillwater and St. Paul, together with the rights, franchises, lands, and privileges pertaining to said portion of said line, which said agreement was filed for record on the 23d day of February, A. D. 1867, in the office of the secretary of state of the State of Minnesota, and to which, when produced, your orator begs leave to refer for greater certainty; and that afterward, by an act of the Legislature of the State of Minnesota entitled "An act confirming an agreement between the St. Paul and Pacific Railroad Company and the corporators of the Stillwater and St. Paul Railroad Company, and authorizing said Stillwater and St. Paul Railroad Company to construct that portion of the main line of said St. Paul and Pacific railroad between Stillwater and St. Paul, and granting lands in aid of the construction of said part of said main line," approved March 4, A. D. 1867, the agreement last aforesaid was assented to and confirmed by and on behalf of said State, and the said St. Paul and Pacific Railroad Company was thereby released from its obligation to construct that portion of its main line so relinquished and from all penalties and forfeitures by reason of the non-construction thereof within the time theretofore provided by law, and that said Stillwater and St. Paul Railroad Company, a corporation then existing under the laws of the State of Minnesota, should have power to enter upon said line of road between Stillwater and St. Paul, and, if deemed necessary, to relocate the same or change the line for engineering purposes, and to construct, maintain, and perpetually to operate a railroad with one or more tracks, with all necessary side tracks and fixtures, so as to construct the same from some convenient point in the city of Stillwater

Agreement relinquishing part of main line between St. Paul and Stillwater.

State act confirming same.

to the city of St. Paul, and to have all and singular the property, privileges, rights of way, franchises, and rights theretofore held by said St. Paul and Pacific Railroad Company or by said State pertaining to said portion of said main line.

Act of Congress authorizing change of branch line.

And your orator further shows that by an act of Congress entitled "An act authorizing the St. Paul and Pacific Railroad Company to change its line in consideration of a relinquishment of lands," approved March 3, A. D. 1871, it was provided that the St. Paul and Pacific Railroad Company might so alter its branch lines that, instead of constructing a road from Crow Wing to St. Vincent, and from St. Cloud to the waters of Lake Superior, it might locate and construct, in lieu thereof, a line from Crow Wing to Brainerd, to intersect with the Northern Pacific Railraad, and from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush Lake, so as to form a more direct route to St. Vincent, with the same proportional grant of lands to be taken in the same manner along said altered lines as was provided for the then existing lines by existing laws: Provided, however, That such change should in no manner enlarge said grant, and that said act should only take effect upon condition of being in accord with the legislation of the State of Minnesota, and upon the further condition that proper releases should be made to the United States by said company of all lands along said abandoned lines from Crow Wing to St. Vincent and from St. Cloud to Lake Superior, and that upon the execution of said releases such lands so released should be considered as immediately restored to market without further legislation; that the said act of Congress last above mentioned was in accord with the legislation of the State of Minnesota, and that the said St. Paul and Pacific Railroad Company duly accepted the same, and before the 19th day of December, A. D. 1871, did make proper releases of all lands along said abandoned lines, as in said act provided, and did proceed to relocate its said branch line of road from East St. Cloud to St. Vincent as aforesaid, by way of and through the towns of Melrose, Sauk Centre, Alexandria, Fergus Falls, Glyndon, and Crookston to St. Vincent aforesaid, which relocation was made and adopted in the field on and before the 7th day of November, A. D. 1871, and a map thereof, duly certified by the officers of said company, was filed with the Governor of the State of Minnesota on the day and year last aforesaid, and that said map of the definite location of said branch line of road, duly attested and certified, was filed in the Department of the Secretary of the Interior of the United States on the 19th day of December, A. D. 1871, and that said map of definite location was, on the 20th day of December, 1871, duly approved by the Secretary of the Interior on behalf of the United States, and was afterwards ratified and confirmed
13 by an act of the Congress of the United States entitled "An act for the extension of the time to the St. Paul and Pacific Railroad Company for the completion of its roads," in and by which it was provided, among other things, that the time for the completion of the railroad from St. Cloud to St. Vincent, in said State, as

then located, with the approval of the Secretary of the Interior, be extended for the period of nine months from the time limited by the acts of Congress relating to the same, and said location was also ratified and approved by the legislation of the State of Minnesota hereinafter set forth.

And your orator further shows that by an act of the Legislature of the State of Minnesota, entitled "An act to provide for the completion of the lines of railroad commonly known as the St. Paul and Pacific Extension lines," approved March 1, A. D. 1877, it was among other things enacted that the time for the completion of the uncompleted portions of the line of railroad commonly known as the St. Vincent Branch of the St. Paul and Pacific Extension lines, be thereby extended as follows: From Melrose to Sauk Centre, until July 1, A. D. 1878; from Sauk Centre to Alexandria, until January 1, A. D. 1879; from Alexandria to Fergus Falls, and from Crookston to St. Vincent, until January 1, A. D. 1880, and from Fergus Falls to Glyndon until January 1, A. D. 1881; provided, however, that such extensions of time were made subject to all the provisions of this and the succeeding sections of this act, in which it was provided, among other things, that in case the St. Paul and Pacific Railroad Company, its successors or assigns, should fail to complete any of the said portions of the said line of railroad within the times therefor therein limited, in that case the portions of said line of railroad then remaining uncompleted, together with the land grant, rights, franchises, immunities, and property appertaining thereto, should at once be and become absolutely forfeited to the State of Minnesota, without any act or ceremony whatsoever; and that it should be the duty of the Governor forthwith, upon such failure, to enter upon and take possession of, for and in the name of the State, all and singular the portions of the road so remaining uncompleted, and all and singular the land grant, rights, franchises, immunities, and property appertaining thereto; and upon such forfeiture all and singular the lines of road, land grant, rights, franchises, immunities, and property so forfeited should be held by the State, without merger or extinguishment, to be used and regranted for the construction of said line of road; and that none of the lands outside the ten-mile limits, commonly designated indemnity lands, should accrue to any company on account of the construction of any portion of the said line of road extending from St. Cloud to St. Vincent until there should first have been reserved therefrom a sufficient quantity to make up ten full sections for each mile of said line lying between such portion thereof and Melrose; that one-half of all the land up to two hundred thousand acres in quantity, which should be first acquired on account of the construction of the then uncompleted line of railroad from Watab to Brainerd, or any part thereof, and one-half of all the lands up to four hundred thousand acres which should be first acquired on account of the construction of the then uncompleted line of railroad from Crookston to St. Vincent or any part thereof, by virtue of any grant of lands which had been or should

State act extending time for completion of roads and providing for relinquishment of lands, etc.

thereafter be made to aid in the construction of said lines of railroad should be reserved and retained by the State, to be used by it for the payment of the claims incurred for work and material furnished in the construction of said lines of railroad; statements of which claims were filed in the State auditor's office in pursuance of an act of the Legislature approved February 21, A. D. 1874; that if any of the lands so reserved should remain undisposed of by the State, after the payment of the claims of the said claimants, they should be conveyed by the Governor to the company which should have completed the portions of railroad to which the lands comprising such residue should appertain; that the land so reserved should be applied to the purposes for which such reservation was made in the manner following: The Governor, attorney general, and railroad commissioner, or any two of them, should, as soon as might conveniently be after the passage of said act, examine into the claims, statements of which had been so filed as aforesaid, and adjust and ascertain the amount remaining owing and unpaid to the parties, respectively, who had filed such claims for work or materials or for both furnished in the construction of said extension lines of railroad, and that they should file in the State auditor's office a compiled statement of the amounts so ascertained by them to be owing and unpaid upon said claims to the said parties, respectively; that in ascertaining the amounts so owing to said claimants that said officers should be empowered to examine witnesses under oath, and that the concurrence of any two of said officers should be sufficient for the determination of the amount remaining owing on any
14 such claims; that if it should be made to appear to said officers that the work or materials embraced in any such claim were furnished by the claimant under a contract with any other of said claimants such fact should be set forth in such statement; that whenever, after the amounts remaining unpaid upon said claims should have been ascertained as therein provided, and any of the lands so reserved should have been patented or otherwise conveyed by the United States to said State, such lands, or so much thereof as might be necessary for such purpose, should be sold by the Governor at public auction, and the net proceeds of all such sales be forthwith distributed ratably by the Governor among said claimants in proportion to the amounts found to remain due and owing upon their respective claims as in said act provided, such notice of the time and place of said sale being first given as the Governor should consider best calculated to inform the public thereof; that such sales should take place from to time, as portions of the lands so reserved should be patented or otherwise conveyed by the United States to the State, until the net proceeds of such sales should have become sufficient to pay such claim in full, or until all such lands should have been sold; that at any such sale the owner or holder of any such claim might become a purchaser, and should be entitled to be credited upon the sum for which such purchase should be by him made with an amount which should bear the same proportion to the amount ascertained to be owing upon his claim as in said act provided as the total proceeds of the sale at which such purchase

should be made should bear to the total amount ascertained to be owing upon all said claims in the aggregate, as thereinbefore provided; that upon the price of any purchase of said lands at such sale being paid or settled, as therein provided, the Governor should execute to such purchaser, his heirs or assigns, a patent for the land so purchased, which should vest in the patentee, his heirs or assigns, the title in fee simple to the lands therein described; that in case it should be ascertained by the Governor, attorney general, and railroad commissioner, as therein provided, that the work or materials for which any of said claims had been filed were furnished under a contract with any other of said claimants, in that case the Governor should so distribute the proceeds of such sales as to prevent payment being more than once made for the same work or materials; that if at any time any of said claimants should receive any payments upon his or their claims from any source other than the proceeds of such lands, such payment should be deducted from the amount of such claim, and such claimant should be entitled to share in the proceeds of said lands only on account of the residue of his claim remaining after such reduction should have been made; that the lands reserved as therein provided should be selected by the Governor, and should be a fair average of the lands acquired from the United States on account of the construction of said uncompleted portions of road; that such selections should be made from time to time, as the lands were acquired from the United States, until three hundred thousand acres in all should have been so selected and set apart; that the St. Paul and Pacific Railroad Company, or any company or corporation taking the benefits of said act should not in any manner, directly or indirectly, acquire or become seized of any right, title, interest, claim, or demand in or to any piece or parcel of land lying and being within the granted or indemnity limits of said branch lines of road to which legal and full title had not been perfected in said St. Paul and Pacific Railroad Company, or their successors or assigns, upon which any person or persons had in good faith settled and made or acquired valuable improvements thereon on or before the passage of said act, or upon any of said lands upon which had been filed any valid pre-emption or homestead filing or entry, not to exceed one hundred and sixty acres to any one actual settler, and the Governor of said State should deed and relinquish to the United States all pieces or parcels of said lands so settled upon by any and all actual settlers as aforesaid, to the end that all such actual settlers might acquire title to the lands upon which they actually resided from the United States as homesteads or otherwise, and upon the acceptance of the provisions of said act by said company it should be deemed by the Governor of said State a relinquishment by said company of all such lands so occupied by all such actual settlers, and in deeding to the United States such lands the Governor should receive as *prima facie* evidence of actual settlement on said lands the testimony and evidence or copies thereof heretofore or which might be thereafter taken in cases before the local United States land offices and decided in favor of such settlers, and that chapter 117 of the Special Laws of said State for 1876, being an

act relative to the construction of a railroad between Breckenridge and Glyndon, and approved March 6, A. D. 1876, and chapter 105 of the Special Laws of said State for 1874, and chapter 49 of the Special Laws of said State for 1875 were thereby repealed.

And your orator further shows that it is informed and believes, and so charges the fact to be, that many of the provisions of the last-named act of the Legislature of Minnesota are *ultra vires* and void, as being in conflict with the provisions of said act of Congress, and in particular the tenth section thereof, and that the said St. Paul and Pacific Railroad Company refused to accept the provisions of said acts and refused to relinquish any lands within the twenty-mile limits of said grant settled upon, occupied, pre-empted, or upon or against which any filing had been made for any homestead, but, on the contrary, protested against the same.

Refusal of company to relinquish lands.

And your orator further shows that in and by an act of the Legislature of the State of Minnesota entitled "An act to amend chapter two hundred and one of the Special Laws of one thousand eight hundred and seventy-seven, entitled 'An act to provide for the completion of the lines of railroad commonly known as the St. Paul and Pacific Extension lines,'" approved March 9, A. D. 1878, section six of said last-named act was so amended that the time for the completion of the uncompleted portions of the line of railroad extending from St. Cloud to St. Vincent, commonly known as the St. Vincent Branch of the St. Paul and Pacific Extension lines, was extended as follows, to wit: From Melrose to Sauk Center until August 1, A. D. 1878; from Sauk Center to Alexandria until December 1, A. D. 1878; from Crookston to St. Vincent until January 1, A. D. 1880; from Alexandria to Fergus Falls until January 1, A. D. 1880; from Fergus Falls to Glyndon until January 1, A. D. 1881; but that such extensions were made subject to all the provisions of that and the succeeding sections of said act; that in case the St. Paul and Pacific Railroad Company, its successors or assigns, should fail to complete any of the said portions of said line of railroad within the times therefor limited in said act, in that case the portions of said line of railroad then remaining uncompleted, together with the land grant, rights, franchises, immunities, and property appertaining thereto, should at once be and become absolutely forfeited to the State of Minnesota without any act or ceremony whatsoever, and that it should be the duty of the Governor forthwith upon such failure to enter upon and take possession for and in the name of the State all and singular the portions of road so remaining uncompleted and all and singular the land grant, rights, franchises, immunities, and property appertaining thereto, and upon such forfeiture all and singular the lines of the road, land grant, rights, franchises, immunities, and property so forfeited should be held by the State, without merger or extinguishment, to be used and regranted for the construction of said line of road; that neither the St. Paul and Pacific Railroad Company nor any other company accepting or acting under the provisions of said act should

State act extending time to complete roads.

be entitled to receive or demand any of the lands granted by the United States to the State of Minnesota to aid in the construction of said line of railroad until that portion of said line of railroad extending from Melrose to Alexandria should be fully completed, with cars running thereon; but that when such portion should be completed, then, and not before, the Governor of the State might convey or certify to the company building such portion not to exceed two hundred thousand acres of said lands, and a further quantity of two hundred thousand acres in case the portion of said line of railroad extending from Crookston to St. Vincent should be also completed, from the lands accruing to said road north of Crookston and not within the indemnity limits: Provided, That nothing should be construed under said act which would waive the right of the State to receive the full grant of ten sections per mile of completed road from the United States; and that when that portion of said line of railroad extending from Alexandria by way of Evansville to Fergus Falls should be fully completed, with the cars running thereon, then, and not before, the Governor might convey or certify to said company all the rest, residue, and remainder of the lands granted by the United States to the Territory of Minnesota to aid in the construction of said line of railroad, and that the Governor of the State should be thereby expressly prohibited from conveying or certifying to such railroad company any of said lands otherwise, at other times, in other quantities, or upon other conditions than in said act provided, as above set forth; and that that portion of section nine of said last-named act commencing with the words "and one-half," in the fourth line of said section, and ending with the words "any part thereof," in the eighth line of said section, were struck out, and that the word and figure "three (3)," in the last two lines of said section, were changed and the word and figure "one (1)" inserted in place thereof, so that the lands to be selected and set apart, as specified in said section, should be one hundred thousand acres instead of three hundred thousand acres.

16 And your orator further shows that the said St. Paul and Pacific Railroad Company, on or about the second day of June, A. D. 1862, did execute and deliver to Edmund Rice, Horace Thompson and Samuel J. Tilden, as trustees, a certain deed of trust or mortgage, bearing date on that day, to secure the payment of bonds duly issued by it to raise means with which to build its road, to the amount of one million two hundred thousand dollars, with interest, of and upon its said line of road from St. Paul by way of St. Anthony to Watab, including all its equipments and appurtenances, tolls, incomes, rents, issues, and profits, and all the railways, ways and rights of way, depot grounds, and other lands; all tracks, bridges, viaducts, culverts, fences, and other structures; all depots, stationhouses, and other appurtenances then held or thereafter to be acquired, and all franchises connected with or relating to said railway, and all corporate franchises, including the franchise to be a corporation, together with all and singular the lands granted as aforesaid by the United States to the Territory of Minnesota by said act

Trust deed or mortgage.

of Congress of March 3, A. D. 1857, for the purpose of aiding in the construction of said line of railway from St. Paul by way of St. Anthony to Watab; which said mortgage or deed of trust was, soon after its execution, duly recorded in accordance with the laws of the State of Minnesota.

Trust deed or mortgage.

And your orator further shows that on or about the first day of March, A. D. 1864, the said corporation called the First Division of the St. Paul and Pacific Railroad Company duly executed a certain deed of trust, bearing date on that day, to Edmund Rice, Horace Thompson, and Samuel J. Tilden, conveying to them all the right, title, and interest which said last-named company then had or which it should or might thereafter acquire or become entitled to in or to all the sections and parts of sections of land granted as aforesaid to the Territory of Minnesota by the said act of Congress approved March 3, A. D. 1857, and subsequently granted as aforesaid by said Territory and State of Minnesota for the purpose of aiding in the construction of said railroad from St. Anthony to a point in the direction of Big Stone Lake, a distance of one hundred and fifty miles, and in and to the whole of said railroad from St. Anthony to a point in the direction of Big Stone Lake, one hundred and fifty miles from St. Anthony, with all and singular the equipments, rolling stock, machinery, tools, implements, and appurtenances, and all corporate and other franchises pertaining or belonging to the same, and the tolls, income, rents, and profits thereof, to secure the payment of corporate bonds of said company duly issued by it, to the amount of three million dollars, with the interest thereon; which said deed of trust was soon thereafter duly recorded in accordance with the laws of said State.

Trust deed or mortgage.

And your orator further shows that the said First Division of the St. Paul and Pacific Railroad Company afterward and on the first day of October, A. D. 1865, executed a certain other deed of trust, bearing that date, to George L. Becker, Horace Thompson, and George T. M. Davis, conveying all the right, title, and interest which said company then had or which it should or might thereafter acquire or become entitled to in and to all those sections or parts of sections of land granted as aforesaid to the Territory and State of Minnesota by the said acts of Congress of March 3, A. D. 1857, and March 3, A. D. 1865, respectively, and by said Territory and State granted as aforesaid for the purpose of aiding in the construction of said railroad from St. Paul by way of St. Anthony, Anoka, and St. Cloud to Watab, and also the whole of said railroad from St. Paul via St. Anthony to Watab, with all and singular the equipments, rolling stock, machinery, tools, implements, and appurtenances, and all corporate and other franchises pertaining or belonging to the same, and the tolls, income, rents, issues, and profits thereof, to secure the payment of its corporate bonds duly issued, amounting in the aggregate to two million eight hundred thousand dollars, with the interest thereon; which said deed of trust was soon thereafter duly recorded in accordance with the laws of said State.

And your orator further shows that the said First Division of the

Trust deed or mortgage.

St. Paul and Pacific Railroad Company afterward and on the first day of July, A. D. 1868, duly executed to George L. Becker, Horace Thompson, and Samuel J. Tilden a certain trust deed, bearing date on the day last mentioned, conveying to them all the right, title, and interest which the said company then had or might thereafter acquire or become entitled to in and to all those sections and parts of sections of land granted as aforesaid to the Territory and State of Minnesota by the said acts of Congress of March 3, A. D. 1857, and March 3, A. D. 1865, respectfully, and by the said Territory and State granted as aforesaid for the purpose of aiding in the construction of the said railroad from St. Anthony to Breckenridge, a distance of
17 two hundred and ten miles (excepting therefrom the lands which said company had acquired or should or might thereafter acquire or become entitled to under the said act of Congress of March 3, A. D. 1857, for the construction of that part of said railroad which extends from St. Anthony to a point in the direction of Big Stone Lake, a distance of one hundred and fifty miles, included in the above-mentioned deed of trust to Edmund Rice, Horace Thompson, and Samuel J. Tilden, dated March 1, A. D. 1864), and also the whole of said railroad extending from St. Anthony to Breckenridge, with all and singular the equipments, rolling stock, machinery, tools, implements, and appurtenances, and all corporate and other franchises pertaining or belonging to the same, and the tolls, income, rents, and profits thereof, to secure the payment of the corporate bonds of said company duly issued, to the amount of six million dollars, with the interest thereon; which said deed of trust was soon thereafter duly recorded in accordance with the laws of said State.

And your orator further shows that after the alteration and relocation of the branch lines of the road of the said St. Paul and Pacific Railroad Company and the approval thereof by the Secretary of the Interior and by the United States, and on or about the first day of April, A. D. 1871, the said St. Paul and Pacific Railroad Company entered into a certain contract with the said First Division of the St. Paul and Pacific Railroad Company for the construction and equipment of said lines of railroad as so altered and relocated as aforesaid, to wit, from St. Cloud to St. Vincent and from Watab to Brainerd, in and by which said contract it was agreed, among other things, that the last-mentioned company should loan and advance to said St. Paul and Pacific Railroad Company or for its use and benefit in the construction and equipment of its said lines of railroad the sum of fifteen million dollars in the bonds of said First Division of the St. Paul and Pacific Railroad Company, bearing date April 1, A. D. 1871, and payable on the first day of January, A. D. 1901, with interest, payable semi-annually, at the rate of seven per centum per annum, and that the said St. Paul and Pacific Railroad Company should assume and secure the payment of said bonds, principal and interest, by the execution and delivery to trustees of a deed of trust or mortgage of and upon all and singular the said lines of railroad

Agreement for loan and trust deed.

so to be constructed, with their respective equipments, appurtenances, and franchises, and also of and upon all right, title, and interest then held or thereafter to be acquired by said St. Paul and Pacific Railroad Company in and to the lands granted by Congress as aforesaid to aid in the construction of such lines of railroad; that the said First Division of the St. Paul and Pacific Railroad Company, in pursuance of said contract, did execute and issue its said bonds, with interest coupons annexed, to said amount of fifteen million dollars, all of which were duly negotiated and sold for value; and the said St. Paul and Pacific Railroad Company did execute and deliver its trust deed or mortgage, bearing date on the first day of April, A. D. 1871, to Horace Thompson, George L. Becker, and William G. Moorhead, trustees, conveying to them, to secure the payment of the principal and interest of said bonds as the same should become due and payable and upon the terms in said trust deed provided, all and singular the said lines of railroad from St. Cloud to St. Vincent, a distance of about two hundred and ten miles, and from Watab by way of Crow Wing to Brainerd, a distance of about fifty-five miles, together with the equipments and appurtenances of the said roads respectively, and the rights, privileges, and franchises thereunto respectively belonging or in anywise appertaining or which should or might thereafter thereunto belong or in anywise appertain, and also all the right, title, and interest which said St. Paul and Pacific Railroad Company then had or which it or its successors or assigns should or might at any time thereafter acquire by reason of the constuction of said railroads or of either or of any part of either thereof or otherwise in, to, or concerning the lands which are embraced or intended to be embraced in the said grants of the United States made by the acts of Congress of March 3, A. D. 1857, and March 3, A. D. 1865, respectively, and which had been or should or might be granted or conveyed to the said St. Paul and Pacific Railroad Company, its successors or assigns, to aid in the construction of the said lines of railroad or of either or any part thereof; which said deed of trust was soon thereafter duly recorded according to the laws of said State of Minnesota.

Execution of trust deed.

And your orator further shows that afterwards and before the third day of August, A. D. 1874, the said First Division of the St. Paul and Pacific Railroad Company made default in the payment of the sums secured by the trust deed hereinbefore mentioned, dated October 1st, A. D. 1865, executed to Horace Thompson and others as trustees, as hereinbefore stated, and a suit for the foreclosure thereof was commenced for such default and breach of conditions of such trust deed by said Horace Thompson and George T. M. Davis, trustees, against the St. Paul and Pacific Railroad Company, the First Division of the St. Paul and Pacific Railroad Company, and others, in the court of common pleas in and for the county of Ramsey and State of Minnesota, which suit was afterwards transferred from said court to the district court of said Ramsey county by and pursuant to chapter 209 of the Special Laws of Minnesota for the

Foreclosure of trust deed.

18

year 1876, and in the progress of said suit John S. Kennedy was substituted as trustee in said trust deed and as a party plaintiff in said suit in the place and stead of George T. M. Davis, and that afterwards such proceedings were had in said suit in said district court for Ramsey county that on the 15th day of March, A. D. 1879, the said court then and there having jurisdiction of said suit and of the parties thereto, a decree was duly made in and by said court and rendered in said cause declaring the amount due on said trust deed of October 1st, A. D. 1865, to be the sum of one million six hundred and seventy-one thousand three hundred and eight dollars and fifty-seven cents, and directing a sale of the property embraced in said trust deed to be had and made for the payment thereof; that thereafter and pursuant to the provisions of said decree said property described in said decree, with its appurtenances,

Sale and conveyance to corporators of complainant.

was duly sold on the seventh day of May, A. D. 1879, to John S. Barnes, for the benefit of himself, George Stephen, Donald A. Smith, Norman W. Kittson, and James J. Hill, for the price and sum of two hundred thousand dollars, which said sale was duly reported to said court and was in all respects confirmed by said court on the 13th day of May, A. D. 1879, and said property, with its appurtenances, was duly conveyed to them accordingly; that thereupon afterwards and on the 23d day of May, A. D. 1879, the said John S. Barnes, George Stephen, Donald A. Smith, Norman W. Kittson, and James J. Hill, pursuant to the provisions of chapter forty-nine of the Laws of Minnesota for the year 1879 and chapter thirty of the General

Organization of complainant.

Laws of Minnesota for the year 1876 and the provisions of the charter of the Minnesota and Pacific Railroad Company, duly organized themselves into and became a corporation under and by the name of the Saint Paul, Minneapolis and Manitoba Railway Company, they having duly performed and complied with all the provisions of said acts on their part, and that afterwards the said John S. Barnes, George Stephen, Donald A. Smith, Norman W. Kittson, and James J. Hill duly conveyed all the property embraced in and covered by the said sale to said The St. Paul, Minneapolis and Manitoba Railway Company, and on the 21st day of June, A. D. 1879, the certificate and deed of conveyance of said property to the purchasers thereof was duly filed in the office of the secretary of state of the State of Minnesota, and that ever since that time your orator, the said Saint Paul, Minneapolis and Manitoba Railway Company, has been and still is a railway company existing and acting as such under and by virtue of said organization and the charter of the Minnesota and Pacific Railway Company and the legislation hereinbefore set forth, and that it thereby became vested with all the rights of the St. Paul and Pacific Railroad Company to the lands, rights, franchises, and other property mentioned in said trust deed so sold and conveyed as aforesaid, with the appurtenances.

And your orator further shows that afterwards and before the

Foreclosure of trust deed.

seventh day of May, A. D. 1874, the St. Paul and Pacific Railroad Company made default in the payment of the sums secured by the trust deed

hereinbefore mentioned, dated June 2, A. D. 1862, executed to the said Edmund Rice, Horace Thompson, and Samuel J. Tilden, as trustees, as hereinbefore stated, and a suit for the foreclosure thereof was commenced for such default and for breach of the conditions of said trust deed by the said Edmund Rice, Horace Thompson, and Samuel J. Tilden as such trustees against the St. Paul and Pacific Railroad Company and the First Division of the St. Paul and Pacific Railroad Company and others in the court of common pleas in and for the county of Ramsey and State of Minnesota, which suit was afterwards transferred from said court to the district court for said Ramsey county by and pursuant to chapter 209 of the Laws of said State for the year 1876, and in the progress of said suit John S. Kennedy was substituted as trustee in said trust deed and as a party plaintiff in said suit in the place and stead of Samuel J. Tilden; and that afterwards such proceedings were had in said suit in said district court for Ramsey county that, on the thirty-first day of March, A. D. 1879, the said court then and there having jurisdiction of said suit and of the parties thereto, a decree was duly made and rendered in and by said court in said cause declaring the amount due on said trust deed of June 2, A. D. 1862, to be the sum of one million four hundred and eighty-one thousand five hundred and twelve dollars, and directing a sale of
19 the property embraced in said trust deed to be had and made for the payment thereof; that thereafter and pursuant to the provisions of said decree, on the second day of June, A. D. 1879, said property described in said decree, with its appurtenances, was duly sold and conveyed to your orator for the price and sum of eight hundred and fifty thousand dollars, which said sale was duly reported to and was in all respects confirmed by the said court on the twelfth day of June, A. D. 1879, and that afterwards and on the twenty-first day of June, A. D. 1879, the certificate of sale and deed of conveyance of said last-named property to your orator were duly filed by your orator in the office of the secretary of state of the State of Minnesota, whereby your orator became vested with all the rights of the St. Paul and Pacific Railroad Company in and to the rights, franchises, and other property mentioned in said trust deed and sold as aforesaid, with the appurtenances.

Sale and conveyance to complainant.

And your orator further shows that afterwards and before the seventh day of May, A. D. 1874, the said First Division of the St. Paul and Pacific Railroad Company made default in the payment of the sums secured by the trust deed hereinbefore mentioned, dated on the first day of March, A. D. 1864, and executed to Edmund Rice, Horace Thompson, and Samuel J. Tilden as trustees, and that a suit for the foreclosure of the last above-mentioned trust deed was commenced for such default and for breach of the conditions of said trust deed by the said Edmund Rice, Horace Thompson, and Samuel J. Tilden as such trustees against the First Division of the St. Paul and Pacific Railroad Company and others in the court of common pleas in and for the county of Ramsey and State of Minnesota, which suit

Foreclosure of trust deed.

was afterwards transferred from said court to the district court for said Ramsey county by and pursuant to chapter 209 of the Laws of said State for the year 1876, and in the progress of said suit John S. Kennedy was substituted as trustee in said trust deed and as a party plaintiff to said suit in the place and stead of Samuel J. Tilden, and that afterwards such proceedings were had in said suit, in said district court for Ramsey county, that on the twenty-ninth day of March, A. D. 1879, the said court then and there having jurisdiction of said suit and of the parties thereto, a decree was duly made and rendered in and by said court in said cause declaring the amount due on said trust deed last mentioned, dated March 1, A. D. 1864, to be the sum of two million sixteen thousand nine hundred and seventy-five dollars, and directing the sale of the property embraced in said last-mentioned trust deed to be had and made for the payment thereof; that thereafter and pursuant to the provisions of said decree of the fifth day of June, A. D. 1879, said property described in and by said decree, with its appurtenances, was duly sold and conveyed to your orator for the price and sum of two hundred and fifty thousand dollars; which said sale was reported to and was in all respects confirmed by said court on the seventeenth day of June, A. D. 1879, and that afterwards, on the twenty-first day of June, A. D. 1879, the certificate of sale and deed of conveyance of said last-named property to your orator was duly filed by your orator in the office of the secretary of state of the State of Minnesota, whereby your orator became vested with all the rights of the said First Division of the St. Paul and Pacific Railroad Company in and to the rights, franchises, and other property mentioned in said trust deed and so sold as aforesaid, with the appurtenances.

Sale and conveyance to complainant.

And your orator further shows that afterwards and before the third day of August, A. D. 1874, said First Division of the St. Paul and Pacific Railroad Company made default in the payment of the sums secured by the trust deed hereinbefore mentioned, dated on the first day of July, A. D. 1868, executed to George L. Becker, Horace Thompson, and Samuel J. Tilden as trustees, and that a suit for the foreclosure of the last above-mentioned trust deed was commenced by said Horace Thompson and Samuel J. Tilden, as such trustees, the said George L. Becker having been removed from his said trusteeship and no one having been appointed in his place, against the First Division of the St. Paul and Pacific Railroad Company and others in the court of common pleas of the county of Ramsey and State of Minnesota, which suit was afterwards transferred from said court to the district court for said Ramsey county by and pursuant to chapter 209 of the Laws of said State for the year 1876, and in the progress of said suit John S. Kennedy was substituted as trustee in said trust deed and as a party plaintiff in said suit in the place and stead of Samuel J. Tilden, and that afterwards such proceedings were had in said suit in said district court for Ramsey county that on the twenty-fourth day of March, A. D. 1879, the said court then and there having jurisdiction of said suit and of the parties thereto, a decree was duly made and rendered in

and by said court in said cause declaring the amount due on said trust deed last mentioned, dated on the first day of July, A. D. 1868, to be the sum of six million nine hundred forty-five thousand three hundred eighty-five dollars and ninety-eight cents, and directing the sale of the property embraced in said last-mentioned trust deed to be had and made for the payment thereof; that thereafter and pursuant to the provisions of said decree, on the second day of June, A. D. 1879, said property described in said decree, with its appurtenances, was duly sold and conveyed in two parcels to your orator, one of the same for the sum of nine hundred thousand dollars, and the other for the sum of four hundred and fifty thousand dollars, which said sales were reported to and were in all respects confirmed by said court on the twelfth day of June, A. D. 1879, and that afterwards and on the twenty-first day of June, A. D. 1879, the certificates of sale and deeds of conveyance of said last-mentioned property to your orator were duly filed by your orator in the office of the secretary of state of the State of Minnesota, whereby your orator became vested with all the rights of the said First Division of the St. Paul and Pacific Railroad Company in and to the rights, franchises, and other property mentioned in said trust deed and so sold as aforesaid, with the appurtenances.

Sale and conveyance to complainant.

And your orator further shows that Horace Thompson, George L. Becker, and William G. Moorhead, trustees under the said trust deed hereinbefore mentioned, executed by the said St. Paul and Pacific Railroad Company on the first day of April, A. D. 1871, to secure the payment of the bonds therein mentioned, were afterwards duly removed from their trusteeship under the same, and Jacob S. Wetmore, Thomas W. Pearshall, and Thomas Denny were duly appointed their successors and accepted said trust; that thereafter, or on or about the — day of December, A. D. 1875, the said St. Paul and Pacific Railroad Company having made default in the performance of said trust deed and in the payment of the sums of money secured thereunder, a suit was duly instituted on the equity side of the circuit court of the United States for the district of Minnesota by said last-named trustees against the said St. Paul and Pacific Railroad Company, the First Division of the St. Paul and Pacific Railroad Company, Horace Thompson, William G. Moorhead, George L. Becker, and Charles A. F. Morris for the foreclosure of said deed of trust, and for other purposes; that afterwards and at the December term of said court, A. D. 1878, to wit, on the 11th day of April, A. D. 1879, such further proceedings were had in said cause in said court, the said court then and there having jurisdiction of the said cause and of the parties thereto, that a final decree was rendered in said cause, in and by which it was adjudged and decreed, among other things, that said mortgage or deed of trust was sufficient in form to convey and mortgage all and singular the lines of road, land grants, lands, property, and franchises in said mortgage described as follows, viz: All and singular the line of railroad of the said corporation, The

Foreclosure of trust deed.

Decree.

St. Paul and Pacific Railroad Company, extending from a point at or near the town of Saint Cloud, in the county of Stearns, to the town of Saint Vincent, in the county of Kittson and State of Minnesota; and also all and singular the line of railroad which said defendant corporation, The St. Paul and Pacific Railroad Company, was authorized to construct from Watab, in the county of Benton, by way of Crow Wing, to the town of Brainerd, in the county of Crow Wing, to intersect with the Northern Pacific railroad at said town, as contemplated by the act of Congress approved March 3, 1871, together with the equipments and appurtenances of the said railroads, respectively, and the rights, privileges, and corporate or other franchises thereunto respectively belonging or in anywise appertaining, or which should or might at any time thereafter thereunto belong or in anywise appertain; and also all the right, title, and interest which the said defendant, The St. Paul and Pacific Railroad Company, then had or that it or its successors or assigns might at any time afterwards acquire by reason of the construction of said railroads or of either or of any part of either thereof, or otherwise, in, to, or concerning the lands situate, lying, and being in the State of Minnesota, which were embraced or intended to be embraced in the grants aforesaid, or either of them, made by the Congress of the United States to the former Territory and present State of Minnesota by the acts of March 3, A. D. 1857, March 3, A. D. 1865, and March 3, A. D. 1871, respectively, which were granted by said State to said railroad company, or should or might be granted or conveyed to it, its successors or assigns, to aid in the construction of the said line of railroad or of either or of any part of either thereof, including in the premises thereby conveyed the road-beds of the said railroads, respectively, and all tracks, bridges, viaducts, culverts, fences, depots, stations, station-houses, engine-houses, car-houses, freight-houses, wood-houses, machine shops, and other shops, and all other structures, buildings,
21 and materials whatsoever, placed or to be placed on the said railroads, respectively, or on either or any part of either thereof, or acquired or to be acquired for the use of the same, and also all locomotives, tenders, passenger, baggage, freight, cattle, and other cars, and all other rolling stock whatsoever, and all machinery, tools and implements, fuel and materials, for constructing, operating, repairing, or replacing the said railroads or either or any part of either thereof, or any of the equipments or appurtenances of said railroads or either or any part of either thereof, held by the said St. Paul and Pacific Railroad Company or thereafter to be acquired by the same, its successors or assigns; together with all and singular the tenements, hereditaments, and appurtenances to the said railroads, lands, and premises or any part thereof belonging or in anywise appertaining, and also all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said St. Paul and Pacific Railroad Company in, to, or concerning the same, and each and every part and parcel thereof, with the appurtenances, and that the same, upon the execution and delivery of said deed of trust, became subject to the lien thereof; that

there was then due and unpaid upon the said bonded indebtedness the principal sum and amount of fifteen million dollars and the interest thereon from July 1, A. D. 1874, which said principal and interest were a lien upon said mortgage property and franchises, as thereinbefore specially stated; that the defendant, the said First Division of the St. Paul and Pacific Railroad Company, or the defendant, The St. Paul and Pacific Railroad Company, pay the same within five days, and in default thereof that all and singular the said mortgaged property, rights, immunities, and franchises be sold by one of the masters of said court, as one parcel and as an entire property, to the highest and best bidder therefor, but for a price not less than one million five hundred thousand dollars; that the right and equity of redemption of the said defendants in said suit and of all persons claiming by, through, or under them or either of them should be absolutely foreclosed and barred; that, the said sum of money so adjudged due remaining wholly unpaid, the said premises were advertised for sale on the 14th day of June, A. D. 1879, and for want of payment of said sum were on that day duly sold to your orator for the price and sum of one million six hundred thousand dollars, it being the highest and best bidder therefor; whereupon said property so sold was conveyed to your orator; that afterwards and at the June term of said court, A. D. 1879, to wit, on the 21st day of June, A. D. 1879, the master's report of said sale and the certificate or conveyance thereof executed by said master were in all respects confirmed.

Sale and conveyance to complainant.

And your orator further shows that in and by each of said several decrees of the said district court of Ramsey county it was adjudged and decreed that the sale of the mortgaged property therein authorized and directed should be absolute and without redemption and free from any right of redemption under the laws of Minnesota or otherwise.

And your orator further shows that by an act of the Legislature of the State of Minnesota approved March 7, A. D. 1881, and being chapter 412 of the Special Laws of said State for that year, it was enacted and declared, among other things, that the said purchases made by your orator, The St. Paul, Minneapolis and Manitoba Railway Company, and mentioned in said act, as evidenced by the several instruments of conveyance and transfer duly entered and remaining of record in the office of the secretary of state of the said State of Minnesota, to wit, the several purchases so made of the main and branch lines (so called) formerly owned by the First Division of the St. Paul and Pacific Railroad Company and of the extension line (so called) extending from East St. Cloud to St. Vincent and the international boundary line formerly owned by the St. Paul and Pacific Railroad Company, with the equipments, land grants, land, property, benefits, privileges, immunities, and corporate and other franchises and powers pertaining to said main, branch, and extension lines respectively, as well as the said several instruments of conveyance and transfer and the organization of said St. Paul, Minneapolis and Manitoba Railway Company, were fully ratified and con-

State act confirming complainant's purchases, organization, etc.

firmed, and the said St. Paul, Minneapolis and Manitoba Railway Company in the use and enjoyment and in the management, operation, and conduct of the business of said main and branch lines and the land grants and lands appertaining thereto should have, possess, enjoy, and exercise, and was thereby declared to be vested with the same benefits, privileges, immunities, and corporate and other franchises and powers as were formerly enjoyed or possessed by the First Division of the St. Paul and Pacific Railroad Company with respect to said main and branch lines, and in the use and enjoyment
22 and in the management, operation, and conduct of the business of said extension line and the lands and land grants appertaining thereto, and was thereby declared to be vested with the same benefits, privileges, immunities, and corporate and other franchises and powers as were formerly enjoyed or possessed by the St. Paul and Pacific Railroad Company with respect to said extension line; and in and by said act it was further enacted that any of said instruments of conveyance and transfer might be proved by the record thereof aforesaid, or by a duly certified copy of such record, as well as by the production of the instrument itself, and that said act should be legal evidence of the corporate character and powers of said St. Paul, Minneapolis and Manitoba Railway Company in all courts and places whatsoever, and that said act should take effect and be in force from and after its passage.

And your orator further shows that its said road from St. Paul to Sauk Rapids, so acquired as aforesaid, was wholly built and equipped on and before the first day of January, A. D. 1868, in part by the said St. Paul and Pacific Railroad Company and in part by the said First Division of the St. Paul and Pacific Railroad Company, and that that portion of its road between St. Cloud and St. Vincent was fully built, equipped, and put in operation in part by the said St. Paul and Pacific Railroad Company and in part by and under the direction of this honorable court, by and through a receiver duly appointed in a suit pending therein, wherein John S. Kennedy and others were complainants and The St. Paul and Pacific Railroad Company and others were defendants, and was finally completed by your orator, all of which was done, as by law in that behalf required, between the twentieth day of December, A. D. 1871, and the fourth day of December, A. D. 1879, to the acceptance and satisfaction of the State of Minnesota and of the United States, and the completion of said road and branches has been duly and regularly certified by the Governor of Minnesota to the Secretary of the Interior of the United States as to successive sections of the same completed as aforesaid and as to the whole of said main line and branches; that the number of miles of road so completed and certified is as follows, to wit: From St. Anthony to Breckenridge, two hundred and seven miles; from St. Paul to Sauk Rapids, seventy-seven miles, and from St. Cloud to St. Vincent, three hundred and fifteen miles, for all of which your orator is entitled to have and receive lands so granted as aforesaid at the rate of ten sections per mile for each mile of completed road, except as to thirty-eight miles thereof between St. Paul and

Date of completion and length of road.

Elk River, and for that distance a quantity of land equal to every alternate odd-numbered section for six miles on each side of said piece of road, and that over six hundred thousand acres of land so granted as aforesaid remain unpatented to your orator, but to which it is now well entitled in the law; "that on or about the 13th day of March, A. D. 1880, your orator duly selected at the local land office, to wit, at the land office of the district of Crookston, within which said lands are situate the said several tracts of lands as enuring to it under the several acts of Congress and the State legislation hereinbefore set forth, which selections were thereupon duly certified by the officers of said local land office to the Commissioner of the General Land Office, at Washington."

Complainant entitled to grants of March 3, 1857, and March 3, 1865.

And your orator further shows that by reason of the premises it has become and now is well entitled to all and singular the lands so granted to the Territory and State of Minnesota by the acts of Congress of March 3, A. D. 1857, and March 3, A. D. 1865, to aid in the construction of its said road and branches so acquired and built as aforesaid, to wit, the main line, from St. Anthony to Breckenridge, and the branch lines from St. Anthony to Sauk Rapids and from St. Cloud to St. Vincent, and that it has received conveyances of the legal title to a considerable portion of the lands so granted and earned by the construction of said lines of railroad, and has in fact earned and is well entitled to a conveyance in fee of all the lands so granted as aforesaid, and is the sole beneficial owner of all those so granted for which patents have not been issued to it or to those under whom it claims title as aforesaid; that a very considerable quantity of lands so granted for the purpose aforesaid, both in the place limits of said grant as determined by the line of the location of the road and branches as well as in the indemnity limits of said grant, have not yet been patented or certified to the said State of Minnesota, and have not been patented to your orator, as they in equity and good conscience ought to have been; that the officers of the General Land Office, in the Department of the Interior of the United States, under erroneous views of the law and of their duty, have from time to time been permitting the said lands to be entered under various acts of Congress, when in fact and in law the said lands are in nowise subject to entry, sale, and disposal under the same, pretending and claiming at times that said land grant expired December 3, A. D. 1873, and that although the said lands have been fully earned by the building and completion of said railroad and branches under and in pursuance of legislation, both congressional and State as aforesaid, that said lands are subject to pre-emption and to homestead entry as aforesaid, whereas the legal title to all
23 said lands in the place limits along said railroad and branches and not conveyed by said State is and has been well vested in the State of Minnesota ever since the definite location of the said road and branches for the sole use and benefit of your orator and those under whom it claims, and your orator is now entitled to the legal title thereto.

And your orator further shows that after the definite location of

the branch line of its road from Saint Cloud to Saint Vincent, filed and approved in the Department of the Interior on the 19 day of December, A. D. 1871, the officers of said Department, under the direction of the Secretary of the Interior, prepared a map indicating and showing the ten-mile limits of said grant along said line, and that immediately upon said location and approval the title to all odd-numbered sections within said limits became and was vested in fee simple in the State of Minnesota for the use and benefit of said St. Paul and Pacific Railroad Company, through and under which your orator claims to have and own said odd-numbered sections; that copies of said map indicating said place limits and said odd-numbered sections as aforesaid were immediately thereafter furnished to the officers of the local land offices along said line in the several districts in which said lands were situate, to wit, at St. Cloud, at Detroit, and at Crookston, in the said State of Minnesota; and that by circular letters addressed to said land officers all lands in odd-numbered sections within twenty miles of the line of said definite location were withdrawn from sale or other disposition at said land offices from and after the 15th day of February, A. D. 1872, and that in pursuance of the premises the lands hereinafter described and now claimed to be owned by the said defendant were withdrawn from sale or other disposition, and by reason of the premises aforesaid became and were and now are the property of your orator, and that it was and is well entitled to hold the same in fee simple.

Withdrawal of lands, etc.

And your orator further shows that on or about the 9th day of April, A. D. 1873, one Charles W. Greenalgh, whom your orator makes defendant to this its bill of complaint, made application to the local land officers at Crookston to secure the following-described lands, to wit: Lot fourteen (14), in section twenty-six (26), lot six (6), in section thirty-six (36), and lots three & five (3 & 5), and the east half of the southeast quarter of section thirty-five (35), in township one hundred and fifty (150) north, of range forty-seven (47) west, in the Crookston land district and State of Minnesota, under the homestead laws of the United States, and filed in said land office his declaratory statement under said homestead laws, alleging that he had made settlement thereon on the 26 day of June, A. D. 1872, and subsequently filed proofs of occupancy under said homestead laws for the requisite period, and claimed that said lands should be patented to him; that his said entry and his said claim to said land were contested by your orator before said local land officers, and afterwards before the Commissioner of the General Land Office of the United States, and before the Secretary of the Interior, who decided and held against your orator's objections thereto that although said lots three and five and the east half of the southeast quarter of section thirty-five (35) aforesaid were within the ten-mile limits of the grant aforesaid, and although the filing of said Greenalgh's declaratory statement was subsequent to the said withdrawal from sale or other disposition of said lands last above mentioned, yet that under section three of the act of Congress of April 21, A. D. 1876,

Title of defendant.

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his claim therefor was valid and properly allowed, for the reason that the said road for which said grant was so made had not been completed prior to the filing of said declaratory statement, and that the time for the completion of the same provided by the acts of Congress hereinbefore set forth had theretofore expired, and that the withdrawal thereof from sale or other disposition hereinbefore set forth of February 15, A. D. 1872, was revoked by the Secretary of the Interior on the 25th day of June, A. D. 1872, and an order to that effect was received at said Crookston office on the 5th day of July, 1872; but your orator states and submits that its said grant had not expired prior to the date of said alleged settlement or at the time of the filing of said declaratory statement, but that at the time of said alleged settlement and of the filing of said declaratory statement it remained in full force and effect, and that said withdrawal of said lands from sale or other disposition so attempted to be revoked by the said Secretary of the Interior was reinstated and made operative by him on the 3rd day of September, A. D. 1872, and that the said alleged settlement of said Greenalgh on said lands was made before said alleged revocation of said withdrawal was notified to or received by said Crookston land office and while said withdrawal was operative and in full force, and that said alleged revocation of said withdrawal by said Secretary of the Interior was and is of no validity or effect whatever; and although the tract of land hereinbefore described, at the time of the definite location of said line, had not been reserved by the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or any other purpose whatever, and although the United States had not, by judicial proceedings, legislative act, or otherwise, made any entry or its equivalent by reason or on account of any alleged breach of condition subsequent contained in said grants, the said Secretary of the Interior, for the reasons aforesaid, upon the said declaratory statement of the said Charles W. Greenalgh and his proofs thereunder, decided and directed that said lands last above described should be patented to the said Charles W. Greenalgh under his said alleged entry thereof under the homestead laws; and that said certificate was issued by the said General Land Office to the said Charles W. Greenalgh for a patent for said last-mentioned lands, and that subsequently and on the 20th day of December, A. D. 1883, a patent from the United States to the said Charles W. Greenalgh was executed in the usual form, purporting to convey the said lands to him in fee simple, under and by virtue of which the said Charles W. Greenalgh claimed and pretended to be the lawful owner in fee simple of said lands; that said alleged entry, patent certificate, and patent of said Charles W. Greenalgh are a cloud upon the interest and title of your orator in and to said lands, situate on said section thirty-five aforesaid, acquired as aforesaid, and that it is well entitled to have the legal title thereto vested in it for its sole use and benefit; that said pretended claim and title of the said Charles W. Greenalgh and of his father, James Greenalgh, under the conveyance to him from

said Charles W. Greenalgh, hereinafter mentioned, in and to said last-described lands are inequitable and illegal, and tend to the manifest prejudice and injury of your orator, because the legal title to said lands has ever since the definite location of said line of road, on the 19 day of December, A. D. 1871, been vested in the State of Minnesota in trust as aforesaid, and that the said lands were in no way or manner subject to homestead entry at the time said Charles W. Greenalgh settled thereon or filed his said declaratory statement or at any time subsequent thereto; that said lands are now of the value of six thousand (6,000) dollars, and are situated within ten miles of the line of said definite location of said road, along which said road has been long since fully completed, and been actually operated for a period of more than ten years last past.

And your orator further alleges that the said Charles W. Greenalgh, on the 31st day of July, A. D. 1882, immediately after making proof of his claim to said lands at the United States land office at Crookston, in Minnesota, and receiving a patent certificate therefor, by a deed of conveyance by him duly executed and acknowledged, made a pretended grant and conveyance of said lands to the defendant, James Greenalgh, dated the day and year last aforesaid, which was recorded in the office of the register of deeds for Polk county, Minnesota, on the 31st day of July, A. D. 1882, and under which said James Greenalgh sets up or pretends to have acquired and to have some right, title, or interest in or to said lands or some part thereof; but your orator charges the fact to be that said conveyance was and is a mere sham and device to complicate the title to said lands and if possible defeat your orator's interest in the same; that said deed was made without any valuable, adequate, or real consideration, and that the said James Greenalgh, at the time of the execution and delivery thereof and before that time, had full knowledge and notice of the rights of your orator in and to said lands, as above set forth.

To the end, therefore, that said defendants, Charles W. Greenalgh and James Greenalgh, may, if they can, show why your orator should not have the relief hereby prayed, and that they may make true, full, and perfect answer to all and singular the matters and things hereinbefore stated and charged as fully and particularly as if the same were hereinafter repeated and they thereunto distinctly interrogated, according to the best of their knowledge, information, and belief, but not on oath, the necessity of the answer of the defendants being put in under the oath of the said defendants being hereby expressly waived; that the said complainant may be declared and adjudged the full, equitable, and beneficial owner of the said tracts of lands and entitled to have and receive the legal title thereto in fee, and that the said patent so issued to the said Charles W. Greenalgh therefor and all title or claim of title of the said defendant to said lands under or by virtue thereof or by said conveyance may be adjudged and declared invalid and of no effect whatever as against the complainant and its said equitable title to said lands, and that the defendants, Charles W. Greenalgh and James Greenalgh, and all persons claiming under, by, or through them, and

particularly the said defendant, James Greenalgh, may be perpetually enjoined and restrained from setting up, asserting,
26 or attempting to put in force or use any right, title, or interest in or to said land or any part thereof under or by virtue of said patent therefor so issued as aforesaid, or of said pretended entry thereof, hereinbefore set forth, and that your orator may have such other or further relief in the premises as the nature of the case may require and as to your honors may seem meet and in accordance with equity—

May it please your honors to grant unto your orator the writ of subpœna of the United States of America, to be directed to the defendants, Charles W. Greenalgh and James Greenalgh, commanding them, by a certain day and under a certain penalty, to be and appear before your honors in this honorable court, then and there to answer all and singular the premises, and to stand to and abide and perform such order and decree therein as to your honors shall seem meet and agreeable to equity and good conscience.

And your orator will ever pray, etc.

R. B. GALUSHA,
Complainant's Solicitor.

S. U. PINNEY, *Of Counsel.*

[Endorsed:] Filed Jan'y 4, '84. Oscar B. Hillis, clerk. Amendments inserted and this complaint refiled Jan'y 18, '84. Oscar B. Hillis, clerk.

26½ And on the same day, to wit, January 4th, 1884, the following order for chancery subpœna was entered in the Common Rule Register, page 187, in the words and figures following:

Order for Chancery Subpœna.

The plaintiff having filed a bill of complaint in this cause, on application of R. B. Galusha, solicitor, ordered that a writ of subpœna issue as herein prayed for.

27 UNITED STATES OF AMERICA, *District of Minnesota:*

The President of the United States of America to Charles W. Greenalgh, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Minnesota, on the first Monday of February next, at the city of Saint Paul, then and there to answer the bill of complaint of The St. Paul, Minneapolis and Manitoba Railway Company, a citizen of the State of Minnesota, filed against you on the 4th day of January, A. D. 1884; hence fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the
[SEAL.] Supreme Court of the United States, the 4th day of January, 1884.

Issued at my office, in the city of Saint Paul, under the seal of sai
circuit court, the day and year last aforesaid.

OSCAR B. HILLIS, *Clerk*,
By —— ——, *Deputy*.

MEMORANDUM.—The above-named defendant to enter — ap
pearance in this suit in the clerk's office aforesaid on or before th
day at which this writ is returnable; otherwise the bill may be taker
pro confesso.

OSCAR B. HILLIS, *Clerk*,
By —— ——, *Deputy*.

R. B. GALUSHA,
Complainant's Solicitor.

27½ [Endorsed:] No. —. United States circuit court, district of Minnesota. St. Paul, M. & M. R'y Co. *vs.* Chas. W. Greenalgh. Chancery subpœna. Returnable to Feb'y rules, 1884. Returned into the clerk's office and filed this 18 day of Jan., A. D. 1884. Oscar B. Hillis, clerk, by —— ——, deputy. R. B. Galusha, complainant's solicitor.

The within subpœna is hereby recalled by order of plaintiff's solicitors, not having been served, the bill herein having been amended by adding a new party defendant and by amending the name of the original defendant; the clerk of the court having been, by præcipe duly filed herein, requested to issue a new subpœna in accordance to said bill as amended.
Jan. 18, 1884.

R. B. GALUSHA,
Plaintiff's Solicitor.

28 And afterwards, to wit, on the 18th day of January, A. D. 1884, an order for *alias* or amended subpœna was entered in the Common Rule Register, page 187, said order being in the words and figures following, viz:

Order for Alias Subpœna.

The plaintiff having filed a bill of complaint in this cause, on application of R. B. Galusha, solicitor, ordered that a writ of subpœna issue as herein prayed for.

29 UNITED STATES OF AMERICA, *District of Minnesota*:

The President of the United States of America to Charles W. Greenalgh and James Greenalgh, Greeting:

You are hereby commanded to be and appear at rules, to be held at the office of the clerk of the circuit court of the United States for the district of Minnesota, on the first Monday of March next, at the city of Saint Paul, then and there to answer the bill of complaint of the St. Paul, Minneapolis & Manitoba Railway Company, citizens of

the State of Minnesota, filed against you on the 18 day of January, A. D. 1884; hence fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, the 18 day of January, 1884.

[SEAL.] Issued at my office, in the city of Saint Paul, under the seal of said circuit court, the day and year last aforesaid.

OSCAR B. HILLIS, *Clerk*,
By —— ——, *Deputy*.

MEMORANDUM.—The above-named defendants to enter their appearance in this suit in the clerk's office aforesaid on or before the day at which this writ is returnable; otherwise the bill may be taken *pro confesso*.

OSCAR B. HILLIS, *Clerk*,
By —— ——, *Deputy*.

R. B. GALUSHA,
Complainant's Solicitor.

[Endorsed:] No. —. United States circuit court, district of Minnesota. St. P., M. & M. R'y Co. *vs.* Chas. W. Greenalgh *et al.* Chancery subpœna. Returnable to March rules, 1884. Returned into the clerk's office and filed this 1 day of Feb., A. D. 1884. Oscar B. Hillis, clerk, by —— ——, deputy. R. B. Galusha, complainant's solicitor.

29*a* UNITED STATES OF AMERICA, } *ss:*
District of Minnesota, }

I hereby certify that I served the annexed chancery subpœna on the therein-named defendant, Charles W. Greenalgh, by handing to and leaving a true copy thereof for him with Grace Greenalgh, his wife, an adult person, then a member of and resident in the family at the usual place of abode of the said Charles W. Greenalgh, near Crookston, Polk Co., in said district, on the 30 day of January, 1884.

H. R. DENNY, *U. S. Marshal*,
By HENRY MORRIS, *Deputy*.

29*b* UNITED STATES OF AMERICA, } *ss:*
District of Minnesota, }

I hereby certify that I have served the annexed chancery subpœna on the herein-named defendant, James Greenalgh, personally by handing to and leaving with him a true copy thereof, near Crookston, Polk Co., in said district, on the 30 day of January, 1884.

H. R. DENNY, *U. S. Marshal*,
By HENRY MORRIS, *Deputy*.

U. S. marshal's fees, $24.84.

30 And afterwards, to wit, on the 28th day of February, A. D. 1884, the following order for appearance of defendant was entered in the Common Rule Register, page 92, in the words and figures following, viz:

Order for Appearance of Defendant.

ST. PAUL, MINNEAPOLIS AND MANITOBA R'Y CO.
vs.
CHARLES WENZEL.

FEBRUARY 28, 1884.

And now comes the defendant, by Charles D. Kerr and R. Reynolds, solicitors, on whose motion it is ordered that the appearance of said defendant be, and the same is hereby, entered.

And afterwards, to wit, on the 3rd day of May, A. D. 1884, the answer of the defendant was filed, said answer being in the words and figures following, viz:

Answer.

In the United States Circuit Court for the District of Minnesota.

The answer of the defendants herein, Charles W. Greenalgh and James Greenalgh, to the bill of complaint of The Saint Paul, Minneapolis and Manitoba Railway Company, complainant.

31 These defendants, now and at all times hereinafter saving and reserving unto themselves all benefits and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said complainant's said bill of complaint, for answer thereto or unto so much or such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto—these defendants, answering, say they have been informed and believe it to be true that by the act of Congress mentioned and entitled in folio two of complainant's said bill a grant of land was made to the Territory of Minnesota for the purposes and under the conditions and with the provisions mentioned and set forth in folios two to twelve, inclusive, of complainant's said bill, except that this defendant avers there was a further provision in said act not mentioned or referred to in complainant's said bill—that is to say, and this defendant avers, that by section six of said act of Congress it was provided and enacted that in case any of the lands on the line of said road or branches "mentioned in said act" were within any Indian territory no title to the same should accrue "nor should the same be entered upon under the authority of said territory until the Indian title to the same should have been extinguished;" and this defendant, for greater certainty with respect to all the provisions and conditions of said act, craves leave to refer to said act when the same shall be produced.

32 And these defendants, further answering in that behalf, aver that said land mentioned in complainant's said bill was at the time of the passage of said act of Congress and always prior thereto had been and for more than six years thereafter and until the 5th day

of May, A. D. 1864, remained and continued within Indian territory, and was during all said time within the limits and part and parcel of aboriginal unceded Indian territory, and was occupied as such by the Red Lake and Pembina band of Chippewa tribe or nation of Indians until thereafter ceded by them by treaty with the United States, negotiated at the old crossing of the Red Lake river on the 3rd day of October, 1863, and thereafter ratified and proclaimed by the President of the United States on the 5th day of May, 1864.

The defendants, further answering, admit all that part of complainant's said bill commencing with the words "And your orator further states," in the fourth line of folio 12, page 2 of said bill, and ended [ending] with the words "Approved by the Secretary of the Interior," in the sceond line of folio 28, of page 4 of said bill.

And these defendants, further answering, say that they know not and have not been informed of the same, save by said complainant's said bill, and cannot set forth as to their belief or otherwise whether or not a map of the definite location of the branch line of the said Minnesota and Pacific Railroad Company was at any time filed in the office of the Governor of the Territory of Minnesota or in the General Land Office at Washington, D. C., or whether or not any
33 such map was, on or about the 12th day of November, 1857, or at any other time, approved by the Secretary of the Interior; and these defendants aver that if any such map was made or filed or approved, as alleged in folio 28 of the complainant's said bill of complaint, it was so made without any survey or location of said line of railroad upon the ground, and no railroad was definitely or otherwise located between St. Cloud and St. Vincent upon or near any line so designated or shown upon such alleged map.

These defendants admit all that part of the complainant's said bill commencing with the words "and that said company," in the 6th line of folio 28th, on page 4 of said bill, and ending with the words "were thereby declared to be public acts," in the first line of folio 74, on page 9 of said bill; but these defendants, for greater certainty therein, ask leave to refer to said acts and joint resolution of Congress and the acts of the Legislature of the State of Minnesota and the Territory of Minnesota, mentioned respectively in the said part of said bill, when the same shall be produced.

And these defendants aver that the acceptance by the State of Minnesota of the joint resolution of Congress referred to in said portions last aforesaid of complainant's said bill of complaint was duly filed in the office of the Commissioner of the General Land Office of the United States, at Washington, D. C., on the 29th day of February, 1864, and the substitution of the grant from Lake Superior in lieu of the grant from Crow Wing to the navigable waters of the Red River of the North was duly accepted by the said St. Paul and Pacific Company on the 25th day of May, 1864.

34 And these defendants further say they have been informed and believe it to be true that on the 3rd day of March, 1865, an act was passed by the Congress of the United States entitled "An act to aid and facilitate the completion of the Saint Paul and Pacific

railroad and branches," approved March 3rd, 1865, but these defendants have never heard or been informed save by complainant's said bill whether said act of Congress was pending in the Congress of the United States on the 2nd day of March, 1865, or not, nor as to whether or not it was then believed by the Legislature of the State of Minnesota that the same would be passed by said United States Congress, and these defendants have been informed and believe it to be true that the general tenor and effect of said act of Congress last aforesaid was as stated in complainant's said bill from folio 75 to 88 thereof, inclusive, but this defendant, for greater certainty therein, prays leave to refer to the said act when the same shall be produced.

These defendants admit all that part of complainant's said bill commencing with the words "and your orator further shows," in the 5th line of folio 88, on page 10 of said bill, and ending with the words "further legislation," in the 2nd line of folio 109, on page 12 thereof.

And these defendants, further answering complainant's said bill, deny that the said act of Congress entitled "An act authorizing the St. Paul and Pacific Railroad Co. to change its line in consideration of a relinquishment of lands," approved March 3rd, 1871, was in accord with the legislation of the State of Minnesota, and, on the contrary, aver that by an act of the Legislature of the State of Minnesota, approved March 7th, 1870, entitled "An act declaring
35 a forfeiture of lands under an act entitled 'An act to amend the charter of the St. Paul and Pacific Railroad Company,'" approved March 2nd, 1867, it was provided and enacted that the lands appertaining to the said road from Lake Superior to a point at or about St. Cloud should be and the same were by said act declared forfeited and lost to the Saint Paul and Pacific Railroad Company, and the said lands were by the said act duly granted to the Minneapolis and Saint Cloud Railroad Company, and thereupon became and have ever since remained the property of the Minneapolis and St. Cloud Railroad Company, which is a corporation duly organized, created, and existing under the laws of the State of Minnesota; and the defendants deny that the said St. Paul and Pacific Railroad Company before December 19th, 1871, or at any other time made or ever after March 7th, 1870, could make releases of all or any of the lands along the line from Saint Cloud to Lake Superior aforesaid, so that the same could "be restored to the market" without further legislation or otherwise.

The defendants admit all that part of the complaint or bill commencing with the words "and did proceed," in the fifth line of folio 109, on page 12, and down to and including the words "on behalf of the United States," in the second line of folio 111, on page 12 of said bill.

These defendants deny that the said relocation of said road mentioned in folio 111 of said bill was ever ratified or confirmed by the Congress of the United States; and these defendants, further answering, aver in that behalf that the said relocation from East St. Cloud to St. Vincent, as set forth in folios 109 and 111 of said bill,

36 was not in accordance with the requirements of said act of Congress of March 3rd, 1871, in this, that it did not connect with the line of the original grant at or near Otter Tail or Rush Lake nor at any other point, nor did it run at any place within twenty-five miles of said original line.

These defendants say that they have been informed, and believe it to be true, that the act of the Legislature of the State of Minnesota entitled "An act to provide for the completion of the lines of railroad commonly known as the Saint Paul and Pacific Extension lines," approved March 1st, 1877, and the act of said Legislature entitled "An act to amend chapter 201 of the special laws of 1877," approved March 9th, 1878, which acts are referred to in folios 112 131, respectively, of the complainant's said bill, were duly passed by the said Legislature as in the complainant's bill alleged; that the provisions of said act were of the tenor and effect set forth and stated in the complainant's said bill, but these defendants, for greater certainty therein, ask leave to refer to the said acts, respectively, when the same shall be produced.

And these defendants deny that any of the provisions of said act or acts are *ultra vires* or void or in conflict with the provisions of any act of Congress, and these defendants are not informed and do not know and cannot state whether the Saint Paul and Pacific Railroad Company refused to accept the provisions of said acts or refused to relinquish any lands thereunder or not, nor as to whether or not said company protested against said acts.

And these defendants, further answering, say that they know not and have not been informed, save by the complainant's
37 said bill, and cannot set forth as to their belief or otherwise, whether or not any of the allegations of complainant's said bill are true commencing with the words "and your orator further shows," in the 6th line of folio 139, on page 15, and down to and including the words "it is now well entitled in law," in the third line of folio 282, on page 22 of said bill; and as to all that portion of the complainant's said bill last aforesaid these defendants say that they have not knowledge or information sufficient to form a belief, except these defendants aver that the complainant's said road from Glyndon to St. Vincent and opposite to the said land described in the said bill was not built or constructed on or near the line of said road as definitely located, according to the map of such location, and at many points on its said line as constructed it was and is more than ten miles from such line of definite location.

The defendants deny all that part of complainant's said bill commencing with the words "and your orator further shows," in the fifth line of folio 202, on page 22 thereof, and down to and including the words "to the legal title thereto," in the first line of folio 207, on page 23 of said bill.

These defendants, further answering, say that they do not know and have not been informed and cannot set forth as to their belief or otherwise, whether or not any allegation of the complainant's said bill is true from and including the words "and your orator further shows," in the second line of folio 207, on page 23, down to

the words "and your orator further shows," in the first line of folio 212, on said page 23.

38 The defendants further show, by way of defense to said bill, that by an act of Congress of the United States entitled "An act to amend the act of March 3rd, 1873, entitled 'An act for the extension of time to the Saint Paul and Pacific Railroad Company for the completion of its road,'" approved June 22nd, 1874, it was provided and enacted that the time for the completion of the Saint Paul and Pacific railroad should be extended until March 3rd, 1876, and no longer, upon the following conditions: That all the rights of actual settlers and their grantees who had theretofore in good faith entered upon and actually resided on the land or any of the lands covered by the grant for said railroad prior to the passage of said act, or who had otherwise legal rights in any of the lands, should be entitled to the said land so settled on in all respects the same as if said land had never been granted to aid in the construction of said line of railroad.

These defendants, further answering, say that by section 1 of the act of Congress of the United States entitled "An act to confirm pre-emption entries and homestead entries of public lands within the limits of railroad grants in cases where such entries have been made under the regulation of the land departments," approved April 21st, 1876, it was provided and enacted that all pre-emption and homestead entries, or entries in compliance with any law of the United States, of the public lands made in good faith by actual settlers upon tracts of land of not more than 160 acres each within the limits of any land grant prior to the time when the notice of withdrawal embraced in such grant was received at the local land office of the district in which said lands are situated, or

39 after their restoration to market by order of the General Land Office, and where the pre-emption and homestead laws have been complied with and proper proofs thereof have been made by the parties holding such tracts or parcels, they shall be confirmed and patents for the same shall issue to the parties entitled thereto.

And these defendants aver that by an order of the Commissioner of the General Land Office of June 25th, 1872, the former withdrawal of the land described in the complaint from the market for railroad purposes was revoked and said land was restored to homestead and pre-emption settlement, and so remained open to such settlement until the 4th day of September, 1872.

That on and prior to the 22nd day of June, 1872, this defendant, Charles W. Greenalgh, was a citizen of the United States, over 21 years of age, and had never had the benefits of the pre-emption laws of the United States, and that on the 26th day of June, 1872, he made settlement in person upon the land described in complainant's said bill with the intention and for the purpose of holding the same under the pre-emption laws of the United States.

That at that date he was not the owner of 320 acres of land in any State or Territory and did not remove from land of his own to make such settlement.

That the map of the survey of the said land was returned to the

local land office at the district in which the same is situated about the 28th day of February, 1873.

And said defendant, Charles W. Greenalgh, from and after
40 the said 26th day of June, 1872, continuously in person resided on and cultivated said land as a pre-emptor until the 6th day of May, 1878, and for a long time thereafter.

That on the said day last aforesaid defendant, Charles W. Greenalgh, duly made his final proof as such pre-emptor of said lands before and to the entire satisfaction of the officers of said local land office, and thereafter paid for the same as provided by law.

And thereupon, under and pursuant to such pre-emption settlement, filing, and proof and payment, a patent was issued to said Charles W. Greenalgh, as stated in complainant's said bill.

That such pre-emption, settlement, filing, proof, and payment was made by said defendant in good faith and pursuant to and under the instruction and to the satisfaction of the Land Department of the United States Government, and this defendant has in that behalf fully complied with all the requirements of the land laws of the United States to entitle him and his assigns to have and to hold the land described in the complainant's said bill herein as against all the world as well as the complainant.

This defendant admits all of the complainant's said bill commencing with the words in the first line of folio 212, on page 23, and down to and including the words "acquired as aforesaid," in the sixth line of folio 219 of page 25 of said bill, except that this defendant, Charles W. Greenalgh, avers that his settlement on said land and his acquisition of the title thereto were under the pre-emption laws of the United States, and except, further, that these defendants have not been enlightened as to the reasons of
41 the Hon. Secretary of the Interior of the United States that such land should be patented to the defendant, Chas. W. Greenalgh, and except, further, that the defendants deny further that the revocation of June 21st, 1872, was of no validity of effect, but aver that the same was legal and valid.

These defendants deny that said complainant is entitled to have the legal title to said land vested in it, and deny that the title or the claim of title of this defendant, James Greenalgh, is inequitable or illegal, and deny that when the settlement was made on said land by this defendant, Chas. W. Greenalgh, as aforesaid, the legal title thereto was or at any time since has been vested in the State of Minnesota, in trust or otherwise, and aver that said land was subject to pre-emption under the laws of the United States at the — said defendant settled thereon as aforesaid.

The defendants admit the deed to the defendant, James Greenalgh, referred to in the complainant's said bill, but deny that said deed was a sham or device or was without consideration, and, on the contrary, aver that said deed of conveyance was made and received in good faith and for a valuable consideration, and that said defendant, James Greenalgh, is an innocent holder of the title to the said land thereunder.

Defendants admit that the said land is now of the value stated in

the said complainant's said bill, and aver that the improvements made and placed thereon by these defendants were and are of the value of $1,000, in addition to the said alleged value of said land.

42 These defendants admit that all said land is situated within six miles of said road, and that said road has been operated past said land for ten years last past, and these defendants deny all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainant's bill of complaint material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, traversed, and avoided or denied, is true to the knowledge of these defendants, and which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable cost and charges in this behalf most wrongfully sustained.

CHAS. D. KERR,
R. REYNOLDS,
Solicitors for Defendants.

JAMES B. BEALS, *Of Counsel.*

Endorsed: "Filed May 3rd, 1884. Oscar B. Hillis, clerk."

43 And afterwards, to wit, on the 3rd day of May, 1884, a replication to the answer was filed in this cause, said replication being in the words and figures following:

Replication.

United States Circuit Court, District of Minnesota.

THE SAINT PAUL, MINNEAPOLIS & MANITOBA RAILWAY CO.
vs.
CHARLES W. GREENALGH and JAMES GREENALGH.

The replication of the St. Paul, Minneappolis & Manitoba R'y Co., complainant, to the answer of Charles W. Greenalgh and James Greenalgh, defendants.

This repliant, saving and reserving unto itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that it will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by this repliant, without this, that any other matters or things whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be

ready to aver and prove as this honosable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

R. B. GALUSHA,
Solicitor for Complainant.

S. U. PINNEY, *Of Counsel.*

Endorsed: "Filed May 3rd, 1884. O. B. Hillis, clerk."

44 Circuit Court of the United States for the District of Minnesota.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
CHARLES W. GREENHALGH and JAMES GREENHALGH. } In Equity.

Aside from the facts conceded by the parties by their bill and answer in this suit, the following further admissions are made, and as to all matter in issue and not admitted by the pleadings or by this stipulation either party may take such proofs as they or it may think fit before the next June term of the court. Either party may produce in evidence at the hearing such documentary evidence as they or it may choose. Oral evidence is to be taken on reasonable notice before any commissioner of the court:

First. It is admitted that the premises in question were within the Indian Territory when the act of Congress of March 3, 1857, took effect, and the Indian title thereto was extinguished by treaty made October 3, 1863, afterwards ratified by the Senate of the United States on the — day of ——, and proclaimed by the President May 5, 1864.

Second. That the St. Paul & Pacific Railroad Company assented to the joint resolution of Congress of July 12, 1862, and the acts of the State Legislature of Minnesota of March 6, 1863, and March 4, 1864, by resolution on the 28th day of May, 1864, adopted by its directors.

Third. Upon the question of conformity of the location of the branch line of road from St. Cloud to St. Vincent with the act of March 3, 1871, and of the conformity of the constructed line
44*a* of road with such located line it is agreed that either party may read at the hearing any testimony now on file in this court in the case of The Northern Pacific Railroad Company *v.* The St. Paul & Pacific Railroad Company *et al.*, and complainant may also read in evidence the testimony of Henry T. Wells in said cause.

Fourth. All the allegations of the bill commencing in the sixth line of folio 139 with the words "and your orator" down to and including the words "three hundred and fifteen miles," in the fourth line of folio 201, are admitted.

Fifth. Opposite the lands in question the road as constructed is on a line nine and one-half miles east of the said located line.

Sixth. It is admitted as to the matter of fact alleged in the bill from folio 207 to the words "15th day of February, A. D. 1872," in

the third line of folio 210, that the same are true as therein stated, leaving the court to determine whether the title passed as therein alleged.

Seventh. The passage of the act of Congress of June 22, 1874, mentioned in the answer, is admitted, to be produced and referred to at the hearing, and also the act of Congress of April 21, 1876.

Eighth. The road was completed from section twenty-two, town. one hundred and forty-six, range forty-six, to section seven, town. one hundred and fifty-four, range forty-seven, in November, 1872, and from the latter point to St. Vincent in November, A. D. 1878.

Ninth. The certified papers as to the pre-emption of defendant and papers relating thereto from the Commissioner of the General Land Office, certified June 30, 1883, are to be produced at the hearing by complainant and to be put in evidence, and the patent issued to said defendant, Charles W. Greenhalgh, shall be produced and put in evidence.

Tenth. It is admitted that the lands in question are within ten miles of the line of definite location of the branch road
44*b* from St. Cloud to St. Vincent as located after the passage of the act of Congress of March 3, 1871.

Eleventh. That this cause stand for hearing at the next June term of said court upon the pleadings, this stipulation and proofs pursuant to the same.

Dated May 1, A. D. 1884.

(S'd) R. B. GALUSHA,
Sol'r for Complainant.

(S'd) CHAS. D. KERR AND
R. REYNOLDS,
Sol's for Defendants.

45 Depositions of James J. Hill and C. J. A. Morris, taken by the plaintiff in the suit of The St. Paul, Minneapolis & Manitoba Railway Company against Charles Wenzel, and used in evidence in this cause pursuant to stipulation between the parties.

JAMES J. HILL, sworn on behalf of complainant, testifies as follows:

Direct examination.

Questions by Mr. GALUSHA:

1 Q. You are the president of the complainant in these two actions?

A. Yes, sir.

2 Q. How long have you resided in the State?

A. Nearly twenty-eight years.

3 Q. What was your business during the years 1871 and 1872 and for some years prior to that?

A. I was engaged at that time in the transportation business.

4 Q. From St. Paul to Winnipeg, down the Red River?

A. Yes, sir.

5 Q. Are you familiar with the country in the Red River Valley, commencing at Glyndon, and from there north to St. Vincent?

A. Yes, sir.

6 Q. State your general familiarity with the country there—how long and to what extent.

A. From 1870 up to the present time I have been over the
46 country a great deal. My business in the transportation of freight on wagons to such points on the river as we could run the boat to, from Winnipeg in low water, made me very familiar with the country south of Grand Forks. There were times in low water when we couldn't run a steamboat south of Grand Forks, and we had to transport freight as best we could and look out our routes. I was familiar with the entire valley from travelling over it, both on horseback and on foot and by wagon. I used to think I was very well posted around the entire valley, and I think I am now.

7 Q. Are you familiar with the originally located line of the St. Paul & Pacific R'y Co.—St. Vincent Extension?

A. I was in the valley when the engineers came there, and knew the location at the time.

8 Q. From Glyndon as far north, say, as Argyle on the road?

A. I was present the day they arrived there.

9 Q. You are also familiar with the line upon which the road was located in 1872 and upon which it is now constructed?

A. Yes, sir.

10 Q. State the character of the country through which the originally located line was laid—that is, between the points I have named, Glyndon and as far north as Argyle.

A. There were several large swamps and districts of marsh on the original location; some of them more than a township in extent. The line, as I remember, was located on the west of the center of those marshes. The year the line was located was the dryest season I have ever known in the Red River Valley. The river, ever since that time, has been navigable for steamboats to Moorhead; but that year, with the lightest draft boat we had, it was very difficult to go beyond the mouth of Two rivers. That is about twenty miles south of the international boundary line. We did, however, go to Grand Forks by putting in teams and taking a long time to make
a trip. I remember of once taking fourteen days in making
47 a trip which could be made in four days. I speak of this to show that the season was an unusually dry one.

11 Q. These swamps and marshes over which the originally located line were laid were then comparatively dry?

A. They were dryer than they have been since. I have been over some of them since—that is, I have been to them and they were entirely impassable. It was impossible to go through them on foot.

12 Q. That has been the case ever since 1872?

A. Yes, sir; ever since then some of them have been largely drained and they are still very wet.

13 Q. The winter of 1871 and 1872 and the spring of 1872 were unusually wet, were they not?

A. I do not remember.

14 Q. Were you up there the spring of 1872?

A. Yes, sir; that spring there was very high water, but I do not know as to the winter.

15 Q. How was this located line of 1871 in the spring of 1872, as to being passable or not?

A. There were portions of the line you couldn't get to without a boat—couldn't get closer than five miles.

16 Q. It was a long distance under water?

A. Yes, sir; part of the line couldn't be reached nearer than five to eight miles without a boat. Portions of the line were dry or comparatively dry—were situated between these marshes. It might be said to be as dry as portions of the line upon which the road was finally built, but these portions were comparatively small—these dry portions comparatively small as compared to the whole distance.

17 Q. Give the reasons, if any, for making it necessary to change the originally located line of 1871 to the present line, which was located in 1872.

A. I was not connected with the road at that time, and can only give as a reason that they could not build a road there, and if they had built it they couldn't get to it unless they got to it in
48 boats. The line that was built skirts the eastern edge of these swamps. In some cases the back water from these swamps has since overflowed the road so as to make it impassable in the spring. It either had to be built as far east as it was built or had to be built farther west than the original location.

18 Q. The line as located in 1871 was as far west as a practicable route could be built without going very close to the Red River — North?

A. It would be necessary to go close enough to the bank of the Red River to get the benefit of the drainage from gulleys making down to the river. We have since built a line from Moorhead, on the bank of the river, and I am very familiar with the profile of the country. The present line from Moorhead north is located not far from where any road should be built on the west of those swamps.

19 Q. And west of the present line?

A. Yes, sir.

20 Q. Could materials for grading and embankments of a railroad be obtained at any advantage west of the present line without going to the bank of the Red River?

A. During the dryest part of the season materials might have been got for portions of the distance alongside the location, but through the marsh part of the distance no material could be got near the line of the road; in fact, the road could not be built there. It was a physical impossibility unless you built it on piles. It could not have been reached, if built on the original line, by settlers adjacent to the line on the east side.

21 Q. State whether or not the present location is better as regards the accommodation of settlers and the business along the line than if built on the original location, and for what reasons.

A. The present location serves all the country in the Red River Valley east of the line where the largest portions of lands fit for set-

tlement are located, except along the immediate bank of the Red River.

22 Q. State whether or not the present constructed line is not the most practicable and shortest route available for building a
49 road through the valley between the points I have first named.

A. It is the most practicable and serves the greatest number of people. From Glyndon north it would be the shortest practicable route.

23 Q. State, from your knowledge of the constructed lines in the Red River Valley between the points above named, as to whether there were any settlers along either the line of 1871 or the line of 1872 at that time—in the years 1871 and 1872; and, if so, to what extent.

A. If there were any settlers at all along the line it would have been Haney—near where Fisher's Landing now is. There was not more than three or four settlers along the entire line, and they were at the crossing of the Red Lake river, and I am sure that they were settled at that point before the spring of 1872. I think they went in the spring of 1872, or possibly after the line was located across the Red Lake river in the fall. These men worked for us, and I knew where they went. They were freighters. I think they went up and settled at what I suppose was the crossing of the Red Lake river in the fall of 1871 and spring of 1872, and except these men there were no other settlers on the line between Glyndon and St. Vincent.

24 Q. As far as these settlers were concerned, the present location was the best line for them?

A. I do not know what has become of them. There is a railway there. Fisher's Landing is there. The present location would not be any better for them than to have it by way of Crookston. It couldn't be built there.

Cross-examination.

Questions by Mr. BEALS:

1 Q. This line spoken of by Mr. Galusha is what you call the branch line of St. Vincent Extension?

A. Yes, sir.

2 Q. Where does this location of 1871 commence, of the St. Vincent Extension?

A. The St. Vincent Extension commences at St. Cloud.

3 Q. The changes that you have spoken of as between the
50 located line of 1871 and the located line of 1872 are between Glyndon and Argyle?

A. Yes; between Glyndon and St. Vincent and Argyle.

4 Q. You haven't, in your direct examination, spoken of any changes between St. Cloud and Glyndon?

A. No; there were changes made between St. Cloud and Glyndon.

5 Q. Are you familiar with the located line of 1871 between St. Cloud and Glyndon?

A. Yes, sir.

6 Q. How far from the constructed line was that located line of 1871 between St. Cloud and Glyndon?

A. The constructed line by act of the State Legislature was directed to run through Fergus Falls. The original location run by way of Dayton, I think about six miles from the location at Fergus Falls.

7 Q. Do you know which side of Otter Tail and Rush Lake the located line of 1871 ran?

A. It ran west of those locations.

8 Q. What was the reason for the change in the line as made between St. Cloud and Glyndon?

A. The location through Fergus Falls was made by an act of the Legislature of the State of Minnesota.

9 Q. That was the only reason for the change between St. Cloud and Glyndon—to bring it to Fergus Falls, in accordance with this act of the Legislature you speak of? There was no difficulties in the route as laid down?

A. No insurmountable difficulties.

10 Q. Is this line of 1871 what they call the Sheppard line?

A. No, sir.

11 Q. What location was that?

A. The line of 1871.

12 Q. The Sheppard location, I call it.

A. I am not familiar with that.

13 Q. How far back were you personally familiar with the country through which this original line of 1871 ran?

A. From twenty to thirty miles.

14 Q. How far did these marshes extend on either side of this located line of 1871?

51 A. The marshes were principally west of the line of 1871—that is, the principal portion of the marshes lay east of the line of 1871. The line as located in 1871 ran through the western portion of these marshes, as a rule—that is, when I speak of marshes I mean these impassable ones.

15 Q. By whom was that line of 1871 located?

A. It was located by Mr. Morris and Mr. Galloway.

16 Q. The line as constructed then was finally constructed upon the eastern edge of these marshes as shown by this map, was it?

A. Yes, sir; the line as constructed was constructed as near the first location as was possible to make it on solid ground without going west of it.

17 Q. The line as located according to this map referred to runs near the western edge of these marshes, does it not?

A. Yes, sir.

18 Q. The change was made from the western edge to the eastern edge of the marshes?

A. Yes, sir.

19 Q. The material for the construction of the line could be better found on the eastern edge of these marshes than on the western edge?

A. It was dryer ground and better grade.

20 Q. Could better ground be found where the line was constructed finally than between the located line of 1871 and the Red River?

A. A good line for construction could be found close to the bank of the Red River.

21 Q. When you say close do you mean upon the adjoining section?

A. I mean from within one to three miles.

22 Q. That would be the entire distance a good line could be located?

—. Substantially that, as you go north.

23 Q. The line as originally located in 1871 didn't run on to these marshes you speak of, did it?

A. Yes, sir; there is not so much of it swamp land as there is farther north and farther south, but a wet country that cannot be traveled over for a greater part of the year by teams.

52 Redirect examination.

Questions by Mr. GALUSHA:

1 Q. These swamps there, which you have stated the line was located over the western portion, extended for some distance west of the located line of 1871?

A. Yes, sir; in places.

2 Q. This wet, marshy country you have spoken of extended for a good portion of the whole distance over the line of 1871 as far north as Argyle?

A. The line of 1871 was located mainly through the wettest portion of the east side of the Red River Valley for the entire distance—that is, taking the entire distance from Glyndon to Argyle. A great deal of that land is the very wettest part of the valley.

3 Q. Notwithstanding the extent of drainage made over these lands since that time it would still be unfit to build a railroad over?

A. It would be impossible, unless large portions of it was built on piles. Some of these lands are so wet that we have been unable to drain them even yet.

Recross-examination.

Questions by Mr. BEALS:

1 Q. Are there marshes over the line as finally constructed—principally near Beltrami?

A. Some; at Beltrami the line skirts the edge of a very large marsh for a short distance.

2 Q. One of the principal marshes the road actually crosses on the road as constructed?

A. At Beltrami.

3 Q. And also near Kittson?

A. There is a small one near Kittson, but that one was drained.

4 Q. How was it between Wakeman and Euclid as finally constructed?

A. That is a very good line.

Redirect examination.

Questions by Mr. GALUSHA:

1 Q. In order to drain the section of the country west of Euclid and Angus through which the original line run, was it not necessary to build a large canal?

53 A. Yes, sir; there is a canal there twenty-two miles long—something over twenty feet wide and six feet deep.

2 Q. State in regard to the character of this country as to lack of drainage and where the water once stood upon it, how it ran off, if at all; also the character of the swamps running through it.

A. The entire east side of the Red River Valley east of the constructed line is more or less drained by natural water-ways. The country is very level, with a gradual fall towards the Red River for the greater distance. The surface water lies in pools or runs slowly over the surface into these sluggish streams, and many of these streams lose their definite character and spread all over the surface of the country—are what they call lost. They run all over the surface of the country and form these marshes and keep them wet through the entire summer. This water lays there unless evaporated by the sun in very dry seasons, when there are no rainfalls to bring up the supply.

3. Q. The natural drainage is insufficient to keep those parts of the country dry?

4 Q. [A.] The drainage of the country is insufficient not only for the maintenance of a railroad, but for the ordinary purposes of travel and cultivation. There is hardly a township but has ditches to carry off the water.

Re-recross-examination.

Questions by Mr. BEALS:

1 Q. This description you have given of the part of the country through which the line actually run, does it apply to the country between the western edge of the marsh and the Red River?

A. These marshes are, as we suppose, and in fact our explorations show are deeper and wider towards the center; and on the western edge the same condition prevails as on the eastern edge, except that there is more water to take care of, and in finding its way, if at all, through the little sluggish sloughs towards the Red River, immediately near the banks of the Red River, more ravines are

54 formed, and to that extent it is better drained within one to three miles of the Red River.

2 Q. It is even then a better country to build a railroad than that to the east of these marshes within that distance of the Red River?

A. On the bank of the Red River, yes, sir; and as good, but only for part of the way. The canal runs from a point directly west of Warren and a point twenty-two miles southeast of Warren and across the line of the 1871 location.

C. J. A. MORRIS, sworn on behalf of complainant, testified as follows:

Direct examination.

Questions by Mr. GALUSHA:

1 Q. You reside in St. Paul?
A. Yes, sir.
2 Q. How long have you lived in the State?
A. Since the spring of 1857.
3 Q. What is your business?
A. Civil engineer.
4 Q. From what length of time?
A. Commencing in the year 1864 or 1865.
5 Q. Twenty years nearly?
A. About twenty years.
6 Q. You have been actively engaged in the business during all that time?
A. Yes, sir.
7 Q. Were you employed during the years 1871 and 1872 by the St. Paul & Pacific Railroad Company in the location and construction of the St. Vincent Extension of that line? If so, to what extent?
A. I was, in 1871. I was first assistant to Mr. R. B. Galloway, who had charge of this location in 1871—the location of the line there a few miles northwest of Fergus Falls to St. Vincent; and in 1872 I had charge of the location and construction of the line from Glyndon to St. Vincent. I did all the instrumental work in running the line of 1871 as what is known as "transitman." In 1872 I was in full charge to select the location and see that it was properly staked out and located.
55 8 Q. What was the character of the season of 1871 during the time you was running the line from Glyndon north?
A. It was very dry.
9 Q. An unusually dry season?
A. Yes, sir; it was. We had great difficulty in finding water to supply common necessities.
10 Q. On returning to the line in the spring of 1872, how did you find the line you had located the fall previous?
A. I found large portions of it under water—impassable.
11 Q. Go on and describe the general character of the line.
A. In the line located in 1871 there was, along there, a country that seemed to be very flat and without any general drainage. There were places where the grass was very long and rank, showing that in wet weather the country would be very wet. In 1872, when we went out there again, we found this country all under water, so that it became necessary to try to find a different locality to build the road. The men's instructions were to try and find a locality where the ground was better drained and keep away from these marshes. In exploring the country on horseback and otherwise I was satisfied that the best ground could be obtained on the east side of these marshes in the wet land, and finally made my location accordingly.

12 Q. In locating the line of 1872, upon which the road is now constructed, the location was made at the fartherest westerly point upon which you could get a good road-bed?

A. Yes, sir; we tried, of course, to keep the general direction of the road as near as possible in a direct line, and we are now just on the easterly edge of the largest marsh at or near Beltrami. In running this line of 1872 I ran a second time into this same marsh, and was obliged to go back down the line some twelve or fifteen miles and make a swing in it still further to the east so as to get out of the locality where this marsh was and get on solid ground. I found the marsh in 1872. I had no boat to get over, but we waded
56 into it and found eight, ten, or twelve feet of water, and I explored it westerly from the line of 1872 almost down to where I thought the line of 1871 was, and found no break between the two localities that we could get through with the line.

13 Q. Upon the line as located in 1871 it would have been impracticable to have constructed a railroad for lack of material?

A. Yes, sir; it would have been impracticable. There would be miles there that in an ordinary season would be under water and the materials would have to be hauled a great distance and the road-bed would have to be on stilts.

14 Q. And it has been so ever since?

A. As far as I know.

15 Q. Would it have been very difficult to obtain material for embankments or ballasting the road?

A. It would have been impossible to obtain them. They would have to be carried long distances.

16 Q. This would apply to the original location as between Glyndon and Argyle?

A. Yes, sir; there was some more marshes and swampy country north of Red Lake river, but I have forgotten exactly where they were.

17 Q. A change of location was made merely for engineering reasons?

A. Yes, sir.

20 Q. In order to drain the section of the country west of Euclid and Angus, through which the original line ran, was it not necessary to build a large canal?

A. To my own personal knowledge I cannot swear to that.

21 Q. The change made necessary in the spring of 1872 by reason of this high water in marshes and swamps, commencing about twelve miles north of Glyndon, controlled to some extent the crossing of the Red Lake river, did it not?

A. Somewhat; yes, sir.

22 Q. Did you assist in locating the crossing of the Red Lake river in 1872?

A. Yes, sir.

23 Q. You made the location yourself?

A. Yes, sir.

24 Q. State the causes and reasons you had for making
57 the location of the crossing of Red Lake river at the present point.

A. Where I first struck the river the valley was very wide and the banks were very high, and it necessitated a very long and high bridge and a very costly one. My object was to find a place that was the most easy to cross, where the immediate water-way of the river could be easily approached, of reasonable grade, and that the bridge itself would be as short as possible. With that object in view I explored the river on either side of the place where I first struck it with the line for a distance of, I suppose, four or five miles, and finally found this particular place where the line is now constructed. The advantage of the place consisted in there being two ravines leading down from the high line of prairie on either side of the low land of the valley below, which enabled us to carry the grade line of our proposed road down to a moderate level above the surface of the water, and in that way save the handling of large amounts of material and the construction of a high, long, and expensive bridge. The point I selected for the crossing was undoubtedly the very best point in that locality within a distance of five or six miles either side. I spent some two weeks there examining the river very carefully and ran lines across it a number of different places. That point was the fartherest east upon which I could obtain a good location for the bridge.

25 Q. Were there many settlers along the line, as located in 1871 or 1872, at the time of the location?

A. There were none at all.

26 Q. State as to whether the line, as located in 1871, could have accommodated the business of the people who settled in the valley after the location of the line; if not, give the reasons.

A. I do not think it would, because these large districts that were overflowed, any settlers easterly or westerly of them would have to go a long distance to get to the railroad. There would be miles there that the road would be unapproachable.

58 27 Q. They would have to reach the railroad by boats?

A. Yes, sir; they would.

28 Q. In this respect how was the line as located in 1872?

A. There is no place on the line of 1872 that they would have to go any great distance to get to the road, excepting in the neighborhood of the south branch of the Wild Rice river (since drained to a great extent), and that would be one, two, or three miles.

29 Q. And for the business interests of the public and of the settlers along the line of the road the present located line is the best and most practicable route?

A. That is my opinion; yes, sir.

30 Q. If the line had been located immediately along the bank of the Red River could it have been reached at all by settlers in the valley east of these large swamps you speak of?

A. No, sir; not without going around the swamps.

31 Q. It would have been almost useless, for the purpose of a railroad, for those people living in the eastern part of the valley?

A. They couldn't use it at all.

Cross-examination.

Questions by Mr. BEALS:

1 Q. In making your crossing of the Red Lake river did you change, in order to get the crossing as you finally made it, the location of your 1872 line south of the river? How far back did you change it?

A. The first line I ran was straight out from Beltrami, and struck the river in here (indicating), about three miles east of this present location.

2 Q. You changed it back how far?

A. I changed it westerly three and a half miles.

3 Q. You went back in order to make that change how far south?

A. I went back about twelve miles.

4 Q. And you finally crossed the river three and a half miles west from where you first struck it?

A. Yes, sir.

5 Q. Now, this 1871 location. You say you were on the ground when that was made?

A. Yes, sir.

59 6 Q. How was that location made; was it actually locating the ground for the railroad?

A. Yes, sir; the line was surveyed out in the usual way.

7 Q. How far apart were the stakes driven on that line?

A. Two hundred feet.

8 Q. That line was actually staked out on the ground?

A. Yes, sir.

9 Q. How great marshes did you find which you couldn't on that line actually stake out?

10 Q. [A.] My recollection is that it was nearly all staked out. Occasionally we might strike a place where the water was so deep you couldn't set up a stake. We used four-foot laths to stake with, and any place where a four-foot lath wouldn't stand up in we didn't stake.

11 Q. What character of stakes did you use on the line which was located in 1872?

A. In 1872 we used laths and shingles quite extensively; the same general character as used on the 1871 line.

12 Q. Then you don't remember of having any particular difficulty in actually locating the 1871 line?

A. No; only as I saw there were districts we went through that I noticed this rank, tall grass.

13 Q. Was there different kinds of grass over the line as located in 1872 from the line of 1871? What was the difference in the vegetation? How great an extent was the difference?

A. A very great extent. The general character of the country on the line of 1872 is higher and dryer and better drained than that of 1871, and the only part of the 1872 line where we passed through any seriously wet country was in the neighborhood of the south branch of the Wild Rice river.

14 Q. What month was the location made on the 1871 line?

A. My recollection is that we started on the 9th day of August, A. D. 1871. I am not positive about that. We left the town
60 of Morris on the 9th of August. The location was made during August and September, 1871, and I do not know whether we ran into October or not.

15 Q. What months was the location made on the 1872 line?

A. The 1872 line was begun about the 1st or 2d of May, 1872, and was carried on from time to time up to, possibly, August of that year.

16 Q. Who were you acting under in making this 1872 location—who had chief management of the road?

A. My father, C. F. Morris, was chief engineer.

17 Q. Who was president of the road at that time?

A. Geo. L. Becker was president.

18 Q. From whom were your instructions received?

A. I received my instructions from the chief engineer.

19 Q. When you started out to make that location was there any idea in the office that there would be a change from the location of 1871?

A. I do not know.

20 Q. Did you have any instructions in regard to it?

A. When we made the survey of 1871 we rendered a report of the character of the country and our opinion of it. We also made estimates of the probable cost of constructing it—of the 1871 line. In order to make those estimates, of course, we had to take into consideration the construction of the country, etc. The proper officers received a more or less good idea of the country we passed through.

21 Q. How far on either side of the line were explorations made in order to locate the line?

A. They were made on an average of three or four miles on either side. By actually going over the ground in that country we could observe on horseback and in wagons the distance beyond where——

22 Q. (Interrupting.) These observations were made and the line was finally staked out as located in 1871 and reported to the head office?

A. Yes, sir.

23 Q. When you started out on your 1872 expedition were there any directions given to you as to finding a better
61 location?

A. Yes, sir; I was authorized not to confine myself strictly to the locality of the 1871 location, but select a line—the best line I could—within a reasonable distance of that.

24 Q. Did you go out on that survey to relocate a line; did you go out from the office with the idea of relocating a line at that time?

A. I do not understand.

25 Q. (Interrupting.) What was the expedition of 1872 for; what did it go out for?

A. To locate the best line we could.

26 Q. Was there a line already located?

A. Yes; but I did not consider that line as the best.

27 Q. Was that the idea of the office?

A. I couldn't say as regards to that.

28 Q. You didn't have any instructions when you left about making another line?

A. No, sir; I was not here when the survey was ordered. I received my instructions to go where Glyndon is now and take charge of a party; there take up the line at Glyndon, where it was staked down, and from there run north of it to St. Vincent. I do not know as I received any written instructions in regard to changing the line at all, but to use my own judgment in staking out the line.

29 Q. Were your instructions then, at that time, of such a character as authorized you to materially change the line as located at that time, or simply to make such changes as would be needed for engineering purposes upon the line already located?

A. I was not hampered with any definite instructions in regard to where I should put the line, but to use my judgment in locating it with a view to getting the best line through the country and on the best ground at the most reasonable expense.

30 Q. You considered your authority sufficient to authorize you in changing the route ten or twenty miles if you so desired?

62 A. Yes, sir; I so considered it. If I had found those marshes running ten miles farther eastward I should certainly have run my line farther eastward.

31 Q. When did you first report to the home office in regard to the needed change?

A. I had run my line up to Sand Hill river, and there struck this large swamp immediately east of Beltrami.

32 Q. How did it come that you first deviated from the located line of 1871?

A. To get away from the marsh of Beltrami and the bad ground in and around Wild Rice river.

33 Q. Where did the deviation commence?

A. Immediately at Glyndon.

34 Q. In the first expedition, then, upon that survey, in 1872, did you go over; and, if so, how far north did you go from the located line of 1871 personally?

A. Except to ride out on the line and look around, we didn't run any line at all.

35 Q. You didn't attempt to carry out in any way the line of 1871?

A. Not there, sir.

36 Q. Was your survey being made at that time with the idea of having it followed by immediate construction?

A. It was.

37 Q. Did you say what season of the year that was?

A. I think I left St. Cloud the 29th of April. I think it was about the first week in May when we started that location.

38 Q. Were your instructions at that time to find the location upon which a road could immediately be built at that time, in the spring of the year, rather than to follow out this location of 1871?

A. My instructions were to use my judgment in regard to the matter, not confining myself to the 1871 location, but to locate the

best line and upon the best ground. I was perfectly authorized to make any changes I saw fit.

39 Q. Did you consider your expedition was more in the
63 light of relocating a general line through that country than it was simply to fix the actual point of construction on the line located in 1871?

A. I was in charge there and was authorized to make any changes I saw fit. Part of my duty was to make those changes if I saw fit. Part of it was to stake out the work ready for the men to do the work after I made my selection of locality.

40 Q. Your duty, as you understood it, was to locate a new route, was it?

A. Yes, sir. My idea was not to locate a new route entirely, but simply to locate a route. I might use the whole line entirely if, in my judgment, that was the best line. The country east of the present location I knew very little about. It was my impression, after passing over the line in 1871, that the best line could be obtained east of the 1871 line.

41 Q. Was that matter discussed in locating the line of 1871?

A. In 1871 we were running right through there, exploring the country on either side of us as we went along.

42 Q. Is it usual, when an expedition is sent out to construct a road, that the change should have been made to the extent it was in this case without any special instructions from the home office?

A. We did not stake out the line of 1871 with the idea that the graders would follow on our heels.

43 Q. Are not those changes which are to be made in finally fixing the line for construction merely the changes required by good engineering in building a road before locating it?

A. I think they are.

44 Q. Did you consider the changes made in the 1872 line within the proper limits of an engineer's discretion?

A. I do, where he has the necessary authority to use his judgment.

45 Q. Your instructions in this particular case were more broad than they usually are?

A. Yes, sir.

46 Q. It was considered in the home office that there might be reason for changing the location to the extent to which it was finally changed in this case?

64 A. I presume so. My instructions were to use my judgment; go where I thought best.

47 Q. Without regard to the located line?

A. Yes, sir; without regard to it.

48 Q. When did you report your changes?

A. When I got up to the marsh immediately east of Beltrami and was just exploring the country either side of it. The chief engineer came along, and it was just at that time I made up my mind that I had to go back of the line twelve or fifteen miles. We explored the country between the present location and the location of 1871, and he also became satisfied that there was no use trying to find a cross-

ing on this particular slope between where the line is now and the line of 1871. He then authorized me to go on as I intended to go in the first place and put the line farther eastward.

49 Q. Coming back to the line of 1871, where it passed this slough, was the line actually staked out and located on this slough passing the——

Witness asks for the question again.

50 Q. The question was, in 1872, whether you could construct a line passing that swamp as it did pass it at Beltrami or as it might have passed it to the westward in 1871.

A. It couldn't have been passed. We——

51 Q. (Interrupting.) What would have been the necessary deviation to have passed this swamp or marsh upon the 1871 location?

A. I suppose we could have crossed it probably about three miles. We would have had to go within a mile or so of the Red River.

52 Q. How did it happen that the line was located where it was in 1871 in passing this marsh?

A. When we started from the Salt Spring line we calculated a course that would carry us directly in a straight line to St. Vincent, not knowing very much about the country. The presumption was that we could run in a tolerably straight line, so we continued
65 that course as far as we could until we struck this bad country. We got up near the Red Lake crossing. In order to get a reasonably good crossing of the Red Lake river in that locality we swung easterly in our general direction; then ran a straight line to the crossing of Two rivers, where the old Pembina trail crosses both branches of Two rivers. The reason we did that was that the country around the swamps of the Grand Marais, which is north of Red Lake river, was reported by our guides and parties we had met. Government surveys were not made at that time. We wanted to keep away from this Grand Marais country.

53 —. Both lines kept away from that Grand Marais country?

A. Yes, sir.

54 Q. What sort of a course did the 1871 located line make with the Red Lake river?

A. The valley there was very wide and the bluffs very bold; we just crossed an immense gulf finally.

55 Q. Was this swamp you have spoken of near Beltrami the most serious swamp on the road?

A. Yes, sir.

56 Q. This, you say, could have been avoided on either side of it?

A. Yes; it could have been avoided by keeping very close to the bank of the Red River.

57 Q. How much of the construction was made in 1872?

A. The grading was all done from Glyndon north to within ten or twelve miles of St. Vincent.

58 Q. Who was at the head of the road at that time?

A. George L. Becker was president.

59 Q. Were there any objections made, or comments, upon your proposed change of the line to the eastward?

A. I never heard of any.

Redirect examination.

Questions by Mr. GALUSHA:

1 Q. If you had found the line as located in 1871 practicable to build on, would you have used it under your instructions?

A. I think I would.

66 2 Q. The changes in the location as made by you in 1872 from the original line were only such as were called for by engineering reasons, were they not?

A. Yes, sir; I made them entirely on account of those reasons.

3 Q. Your instructions were such that if you had found the old line practicable you would have built on it; and also, if you found it impracticable, to make such changes in the location as were necessary for obtaining a good road only?

A. Yes, sir; I had no instructions otherwise at all.

4 Q. Then you were not locating a new line, but simply making the necessary change in the original location?

A. I was making improvements necessary and changes on the first location.

5 Q. Where you could get back on the original location that was done?

A. Yes, sir.

6 Q. In constructing a line of railroad upon a line originally located, while such changes become necessary for engineering reasons, is it not usual and customary for the engineer in charge of construction to make proper deviation in order to obtain a good line?

A. Yes, sir; that is the rule. He is usually instructed to take charge of a permanent location that way, and go on with the construction. He is invariably authorized to make such changes as he may see fit; of course, in a locality where they can report they do so, but I was out there where I couldn't report if I wanted to.

7 Q. You were sent up there in charge of the final location and construction of the road, either upon the original location or upon a change of location made necessary by any obstacles that may have intervened between the time of the original location and construction?

A. Yes, sir.

67 STATE OF MINNESOTA, *Ramsey County:*

Norman W. Kittson, of St. Paul, Minnesota, being duly sworn, deposes and says that he has been a resident and citizen of the State and former Territory of Minnesota for more than thirty years last past and was for many years in the service of the American Fur Company, in said Territory of Minnesota, and engaged for many years previous to the admission of the State of Minnesota in trading with the different tribes of Indians then living in said Territory and in the Province of Manitoba.

That his business made it necessary for him to travel from the present city of St. Paul to what was then known as the Selkirk settlement, now the Province of Manitoba, annually and frequently

several times during the course of a year; that his route of travel between said points was by the way of the Red River Valley, in said Territory of Minnesota, and from the frequency of such journeys he became very familiar with the topography and general character of the country in said valley; that his journeys through said Red River Valley were sometimes on foot and at other times in wagons or carts or by dog sleds, and at all seasons of the year, and from information thus derived by actual travelling over and through and observing said Red River Valley in all parts thereof he knows personally the character of the country over which the original line of definite location of the St. Paul and Pacific, St. Vincent Extension, made in the year 1871, ran, as well as the line upon which said railroad (now the St. Paul, Minneapolis and Monitoba) was built; that said original line of definite location, from a point a short distance north of Glyndon to a point near Snake river, passed through and over

68 very large marshes and swamps, which in wet seasons are and have always been wholly impassable to travel of any kind, but in dry seasons can sometimes be driven or walked over; that said range of marshes commences about 12 miles north of Glyndon and extends northerly through townships 143, 144, 145, and 146 and 147, in ranges forty-seven and forty-eight, and are from four to twelve miles in width; and affiant believes that it would be wholly impracticable to build a railroad or any road over and upon the line originally located by said St. Paul and Pacific R. R. Co. in 1871, and from his knowledge of said Red River Valley he believes that no available or practicable location for building said line of road could have been made any further west than the present line upon which the same has been constructed. Affiant further says that the fall of 1871 was exceedingly dry, and that many of said swamps and marshes could probably have been passed over at that time on foot with little difficulty, but that in ordinary seasons the route of said line surveyed in 1871 would have been, for parts of the season, wholly impassable for traveling of any kind and unfit for the construction of a road of any character, as much of said line passing through said swamps would have been covered by water.

Affiant further says that the line finally adopted by said railroad company is undoubtedly the one best calculated for the interest of and most accesible to the settlers in said valley, and if constructed on said first line said road would at times have been wholly inaccessible by reason of said swamps, and would in wet seasons — been

69 covered in many sections by water.

Further, affiant says that he knows of his own personal knowledge that at the time of the location of said first-named line, in 1871, and up to the time of the location of said constructed line in said Red River Valley, there was no settlers north of Glyndon upon either of said lines, but said country through which said lines so passed was then wholly unsettled and unoccupied, and that the rights or interests of no settlers or occupants of said lands were or could be injuriously affected by said change of line.

N. W. KITTSON.

Subscribed and sworn to before me this 21st day of April, 1880.
EDW. J. SCHURMEIER,
[SEAL.] *N. P., Ramsey Co., Minn.*

(Endorsed on back:) It is agreed that the above and within affidavit may be read as testimony on behalf of plaintiff in suits in U. S. C. C. by St. P., M. & M. R'y Co. *vs.* Chas. W. Greenalgh and Same *vs.* Wenzel upon joint hearings on reason for change of location of line of road, subject, together with other testimony taken on that point, to objection as irrelevant and immaterial. 5 June, 1884. James B. Beals, solicitor for defendants. Filed Sept. 16, 1885. Oscar B. Hillis, clerk.

70 Testimony of Henry T. Welles, taken in suit of Northern Pacific R. R. Co. *vs.* St. Paul and Pacific R. R. Co. *et al.*, and read in evidence pursuant to stipulation in this cause.

HENRY T. WELLES, a witness produced on the part of the defendants, being first duly sworn, deposes and says:

Q. You reside at Minneapolis, I believe?
A. Yes, sir.
Q. How long have you resided there?
A. 24 years.
Q. You are familiar with the Minneapolis and St. Cloud Railroad Company, are you not?
A. I am, generally.
Q. State what your connection has been with it, please.
A. A stockholder and director.
Q. Have you not also acted as its secretary at some time?
A. I don't remember that I have.
Q. When was it incorporated?
A. About 1856, by a special charter.
Q. State whether or no this company ever located upon the ground any line of road between St. Cloud and — Superior. I refer to the line of road that it was authorized to construct connecting the waters of the Lake Superior with the line of the St. Paul and Pacific road.
A. It never did, to my knowledge.
Q. Did it ever construct any road whatever upon that line or do any work of construction thereon whatever?

Objected to as immaterial.

A. No.

Cross-examination:

Q. State whether the Minneapolis and St. Cloud Railroad Company ever surveyed any lines of road; if yea, what lines?
A. Yes; the line from St. Cloud towards the Minnesota river. It was a subcompany that did this, organized under the Minneapolis and St. Cloud Railroad Company.
Q. Where was the chief office of this company?

A. It was at Minneapolis at one time, within six years past; before that it was at St. Cloud.

Redirect:

Q. The line to which you refer, from St. Cloud towards the Minnesota river, was a line wholly west of the Mississippi river, was it not?

A. It was.

HENRY T. WELLES.

71 Circuit Court of the United States for the District of Minnesota. In Equity.

THE SAINT PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
CHARLES W. GREENALGH and JAMES GREENALGH.

Supplemental Statement of Facts Admitted.

1. After the year 1873 and until May, 1878, no work of construction was done on the unfinished portions of the railroad of the St. Paul and Pacific R. R. Co., nor did that company or its receiver ever by vote, resolution, or otherwise accept or assent to the provisions of the act of the Legislature of Minnesota of March 1st, 1877, and particularly of section ten thereof, unless the fact that the company built the remainder of its road after the passage of the act of the Legislature of March 9th, 1878, amounted to an acceptance thereof or assent thereto.

2. The complainant's road was completed along and opposite to the land in question in November, 1872, and before the defendant, Charles W. Greenalgh, filed his pre-emption claim thereto. The annexed letter of the Commissioner of the General Land Office directing a withdrawal, and the map therein mentioned showing the ten and twenty mile limits of the grant, mentioned in folios 208 to 210 of the bill, were filed in the local land offices on or about February 15th, 1872. The letters, copies of which are hereto annexed, marked Exhibit "A," dated, respectively, December 20th, 1871; Feb. 6, 1872; June 18, 1872; June 25, 1872; Sept. 3, 1872; Dec. 4, 1873; May 27, 1880, and June 10, 1880, show the action of the Department of the Interior and of the Commissioner of the General Land Office as to the condition of the grant and
72 its adjustment after the filing of the map of definite location, November 18, 1871. On Sept. 13, 1872, the order vacating the withdrawal of lands as originally made in February, 1872, was revoked by direction of the Commissioner of the General Land Office, communicated to the local offices by telegrams, pursuant to the said letter of the Secretary of the Interior to him of that date, which withdrawal has never been revoked by the Interior Department. The road in question was completed to the satisfaction of the State, and certificates thereof were made by the Governor and

filed in the Department of the Interior before the commencement of this suit. The time of the completion of the road is correctly stated in the letter of the Commissioner of the General Land Office, dated May 22, 1880, to the Secretary of the Interior, embraced in Exhibit "A." Work was at one time suspended on the road, in the fall of 1872, and in 1873, in the suit of John S. Kennedy *et al. vs.* The St. Paul and Pacific R. R. Co. *et al.*, in this court, commenced July 14, 1873, Jesse P. Farley was appointed receiver of the road and of all its property and rights, and by order of Sept. 1st, 1873, he was authorized by the court to complete the road and to issue debentures for that purpose, and the road remained in the hands of the receiver until about the time of the completion of the whole thereof, and that portion not completed in 1873 was completed in 1878 and 1879 under an order of this court in that suit, made in May, 1878. The said Farley was not discharged from his trust as receiver until May 9, 1883, although the complainant became the owner of the road at the time stated in the bill.

3. The maps of location of the line of road from Crow Wing by way of Otter Tail and Rush Lakes, filed in the Depart-
73 ment of the Interior in 1869, and of the line from St. Cloud to St. Vincent, filed Nov. 10, 1871, showing the lines then laid down, are in evidence, and transcripts thereof may be filed by either party showing the general route on a small scale as a part of the record, it being immaterial to show the same in detail. It is admitted that a line was run upon the ground in 1870 from the end of the line surveyed in 1869 through to St. Vincent, and a map thereof was made, but no action thereon was taken by the board of directors of the company, nor was any map thereof filed in any public office of the State or of the United States. A map of such line on a small scale may be filed herein as above provided in case of other maps.

4. All acts of the Legislature of Minnesota and of Congress mentioned in the pleadings or otherwise material are to be considered in evidence and may be referred to at the argument.

5. The St. Cloud and Minneapolis Railway Company mentioned in this suit never built or located any line railway, and did nothing at any time towards earning any of the lands granted to the State for railway purposes.

6. The defendant settled on the land in suit June 2nd, 1874, and filed his declaratory statement September 2, 1874. He made valuable improvements on the land in suit prior to Jan. 1, 1875; and the value of the property claimed by the complainant in this suit is fifty-five hundred dollars. The certified papers as to his preemption filed in this cause show the origin and character of his claim to the lands, and a patent was issued to him therefor upon such claim, in the usual form, dated Dec. 20th, 1883.

7. After the completion of the road, and on the 24th day of July,
1880, the Governor of the State of Minnesota executed to the
74 United States a deed of relinquishment of the lands in question, with certain other lands within the limits of said grant, and he claimed the right to execute it under section ten of the act

of the Legislature of March 1, 1877, hereinbefore referred to, and the deed so recites; which deed was recorded in Book C of Railroad Records, on page 580, in the State auditor's office. The defendant may amend his answer so as to state the matters alleged in this paragraph.

JAMES B. BEALS,
Defendant's Solicitor.
R. B. GALUSHA,
Plaintiff's Solicitor.

Oct. 6, 1885.

EXHIBIT A.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *20th Dec.*, 1871.

SIR: I transmit herewith for appropriate action a map designating the route and location of the St. Paul and Pacific railroad from a point at or near St. Cloud to St. Vincent, Minnesota, pursuant to the acts of 3rd of March, 1857; 3rd March, 1865, and 3rd March, 1871. The last of these acts authorized the company to change its line in consideration of a relinquishment of lands. Said relinquishment was filed in this Department yesterday by Hon. B. F. Wade, agent and attorney for the company, and the map should be considered as filed at that date. On first examination of said map I entertained doubts as to the conformity of the route therein shown with the requirements of said act of 1871, on account of its not intersecting the line of the original grant at or near Otter Tail or
75 Rush Lake, the nearest point of the route as amended, being some miles distant from either of said lakes; but further reflection has convinced me that the new route is a substantial compliance with the terms of the act.

Sufficient evidence has been filed in the Department to show that the change of the line is in accord with the legislation of the State of Minnesota, as required by said act of 1871.

I am, sir, very respectfully your ob't servant,

C. DELANO, *Secretary.*

Hon. Willis Drummond, Commissioner Gen. Land Office.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *18th June*, 1872.

SIR: On the twentieth December last I transmitted to your office for appropriate action a map designating the route and location of the St. Paul and Pacific railroad from a point at or near St. Cloud, Minnesota, to St. Vincent, in said State. I stated in my letter of transmission that sufficient evidence had been filed in the Department to show that the change of line indicated by said map was in accord with the legislation of the State of Minnesota, as required by the act of 3rd March, 1871. (16 Stat., 588.)

This evidence was partly in print and partly by oral assurance of an officer of the railroad company.

On the twentieth of February last a letter was addressed to the Department by Lafayette Emmett, president of the Minneapolis and St. Cloud Railroad Company, alleging that said act of March 3rd, 1871, was not only not in accord with the legislation of the
76 State of Minnesota, but directly opposed to it. On the receipt of Mr. Emmett's letter its contents were made known, on the 29th of February last, to the attorney of the St. Paul and Pacific Company in this city, with a request that he at once inform the officers of said company of these allegations, and that unless a satisfactory explanation of them were given to the Department the order withdrawing lands for said road would be revoked.

No explanation of any kind has to this date been made by the company, and any order that may have been issued by your office withdrawing lands, in accordance with my letter, 20th December last, is hereby revoked.

I am, sir, very respectfully your obedient servant,

C. DELANO, *Secretary.*

Hon. Willis Drummond, Comm'r Gen. Land Office.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *3rd Sept.*, 1872.

SIR: Referring to the departmental letter to your office of the 18th June last, in which my order withdrawing lands for the St. Paul & Pacific was revoked, I have now to direct you to rescind said order of revocation and restore the withdrawal, with the distinct understanding, however, that this is not to be regarded as a decision on the merits of the case, all questions as to the right of the road to the land being reserved for further consideration.

Very resp'y your ob't servant,

W. H. SMITH,
Acting Sec'y.

Hon. Willis Drummond, Comm. Gen. Land Office.

77 DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *4th Dec.*, 1873.

SIR: I transmit herewith three maps of portions of the St. Vincent Branch of the St. Paul and Pacific railroad showing the road as completed from a point in section 35, T. 138, R. 46, being twelve miles south of the crossing of the N. P. R. R. to a point fifty miles north thereof in section 32, T. 146, R. 46; from East St. Cloud, in Sherbourne Co., at a point where said road joins the branch line of the first division of the St. Paul and Pacific R. R., to Melrose, in Stearns county, 35 miles, and from a point in section 32, T. 146, R. 46, to a point 55 miles north thereof in section seven, township 154, range 47.

Very respectfully, etc.,

C. DELANO, *Secretary.*

Hon. Willis Drummond, Com'r G. L. O.

Nov. 17, 1879, Messrs. Curtis, Earle and Burdette, attorneys, filed in this office evidence showing that the St. Paul, Minneapolis and Manitoba Railway Company had become the legal successors of the St. Paul and Pacific Railroad Company.

January 16, 1880, there was referred to this office by the Department, without action, a map showing the line, as constructed, of the St. Paul, Minneapolis and Manitoba railroad from Alexandria to a point 12 miles south of the Northern Pacific railroad, an estimated distance of eighty miles. The map was sworn and subscribed by the chief engineer and certified by the general manager December 23, 1879, and by the Governor January 9, 1880. It was accompanied by a letter from the Governor, dated January 10, 1880, asking the certification of lands accordingly.

By the evidence on file, as above recited, it appears that the road is now fully completed. It was not completed within the time required by law, but inasmuch as no forfeiture of the grant has been declared by competent authority I am of opinion that, so far as that question is concerned, the State would still be entitled to patents for the benefit of the road. Upon this point, however, I respectfully ask your instructions.

82 But the road has not been constructed on the line of definite location. I enclose a map or diagram of Minnesota, on which I have caused to be drawn a red line showing the definite location and a blue line showing the constructed road, illustrating as nearly as practicable on so small a scale the deviations. It will be seen at a glance that the defections are numerous, and in some instances, for long distances, from six to ten miles from the located line.

I am informed by counsel for the company that they are prepared to place before you evidence to show the necessity for the deflections in constructing the road and the reasons why, in their opinion, the case should be held as coming within the rule established by the Department in recent decisions concerning other grants and involving like questions.

I have declined to submit lists of the lands selected until instructed by you in the premises.

Very respectfully, your obedient servant,

J. A. WILLIAMSON,
Commissioner.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *June* 10, 1880.

SIR: I am in receipt of your report of 27th of May last upon the status of the grant of lands made to the State of Minnesota to aid in the construction of a railroad from St. Cloud to St. Vincent, in that State.

The report and accompanying map show that a road has been constructed between the above-named points by a company

83 recognized by the State authorities as being entitled to the benefits of the grant; that the road was not completed within the time directed by the statutes of the United States; that no for-

feiture of the grant has been declared, and that the line of the road, as constructed, deviates in some places from the line of the definite location indicated by the map filed in this Department in 1871, upon which the withdrawal for the benefit of the grant was made, the largest deflections being between Glyndon and St. Vincent.

Upon these facts you submit two questions for my consideration, and request to be instructed in the premises:

First. Whether, considering the failure to complete the road within the time directed by the statute, the State is entitled to patents for the benefit of the St. Paul, Minneapolis and Manitoba Railway Company, the present owner of said road.

Second. Whether, in view of the deviations in the line of construction from the line of definite location, the State is entitled to patents under the grant for the benefit of said company.

Upon the first point you express the opinion in effect that, notwithstanding the road was not completed within the time mentioned in the act of March 3, 1873 (17 Stat., 631), the State is entitled to patents under the grant.

I fully agree with you upon this point—the act of June 22, 1874 (18 Stat., 203), the conditions of which have not been accepted by the company—being held as neither enforcing nor declaring a forfeiture of the grant.

84 (Kemper *v.* St. Paul & Pacific R. R. Co., Copp's L. O., vol. 3, p. 170.) The law controlling this question is well settled. (Schulenberg *v.* Harriman, 21 Wall., 44.)

Upon the second point you express no opinion.

The only question for determination, however, is whether the deflections in the line of the constructed road are of such character as to make it a different road from that contemplated by the grant and withdrawal then the State has no right to patents for the lands claimed.

But it is the road so contemplated if the deflections become necessary in order to avoid engineering obstacles which could not be otherwise overcome without exaggerated expense or to remedy defects in the original location. In other words, if the road as constructed is a substantial compliance with the granting acts, the State is entitled to the benefits of the grant.

(Opinion of the Attorney General of Feb. 2, 1880, Copp's L. O., vol. 7, 12; case of McGregor — Western R. R. Co., *id.*, 27; case of Hastings and Dakota R. R. Co., decided April 14, 1880.)

Since your report was received the said company has filed in this Department affidavits showing why the road between Glyndon and St. Vincent was not constructed on the line as located in 1871. The affidavits were made by the following parties, respectively:

Charles A. F. Morris, who was chief engineer of the St. Paul and Pacific R. R. Co. in the years 1871 and 172, and who surveyed and located the line of 1871 and re-examined it preparatory to constructing the road between Glyndon and St. Vincent, in 1872;

85 Charles J. A. Morris, who was employed by said company in 1871 and 1872 in the location and construction of said road between the points aforesaid; Andrew De Graff, railroad constuctor

for said company, under whose personal supervision a large part of the St. Vincent Extension road was built; Norman W. Kittson, whose business for many years required him to make journeys yearly from St. Paul to Manitoba via the Red River Valley, and who is well acquainted with the country through which said road is built; James J. Hill, who was engaged from 1868 to 1879 in the transportation business on the Red River of the North between St. Paul and Winnepeg, in Manitoba, and who has passed through the Red River Valley at all seasons of the year and is well qualified to depose as to the facts alleged by him, and William P. Payte, a civil engineer well acquainted with the topography of the country through which said road passes.

The affidavits of these witnesses show that there are extensive swamps and marshes in townships 143, 144, 145, 146, 147, and 154, ranges 47 and 48, and in townships 156, 157, and 158, in ranges 49 and 50; that the season during which the location of 1871 was surveyed was very dry in the section of country through which the road was located; that at that time the said swamps and marshes were comparatively dry, and the surveyors walked over them without difficulty; that the line was located over said swamps in the belief that it was a feasible route, and upon which the necessary material could be easily obtained for grading and ballasting; that in the winter of 1871 and 1872 there were heavy falls of snow in
86 that vicinity, and the weather of the spring and summer of 1872 was very wet; that, upon a re-examination of said line in 1872, preparatory to commencing the construction of said road, it was found that the country for a great distance in the above-named townships, and over which the line of 1871 was located, was under water to the depth of several feet; that earth in sufficient quantities to raise the road-bed above water could not be obtained except by hauling it a long distance at a great expense; that the largest of said swamps was in township 147, ranges 47 and 48, and was twelve miles wide; that said swamps were under water certain seasons almost every year, and presented engineering difficulties in the way of building said road of such a character as to make it necessary to locate the line of construction far enough to the east to avoid the same; that the point of crossing the margin of the large swamp above mentioned governed the location of the road for many miles north and south thereof; that upon careful examination it was found that no ground over which it was practicable to build the road could be found nearer to the definitely located line than to the east of said swamps and marshes, where the road is constructed; that the point of crossing of Red Lake river at Crookston was the most feasible one and the best adapted for bridging that could be found for many miles in either direction; that no lands in that vicinity were settled upon or entered with reference to the line of definite location prior to the establishment of the line of actual construction; that the progress of settlement kept pace with the construction of the road, and that the road as built is the shortest and best practicable one that could be had between Glyndon and St. Vincent.

87 From the foregoing it is apparent that the deflections from the line located in 1871 between the points last above mentioned were necessary to the proper construction of the road. It is clear that the road as now constructed is of immeasurably more value to the inhabitants of Red River Valley along its line and better adapted to the purposes for which the road was intended than it would have been had it been built through said swamps and marshes, to say nothing of the extra expense of building and keeping it in repair over the latter route.

One of the principal objections to varying from the line of definite location in constructing a land-grant road does not exist in this case, viz., that settlers locate and purchase lands at the advanced rates in view of the definite location and for convenience to the road. The deflections south of Glyndon do not appear to be material.

I am therefore of the opinion that the said road was built in substantial compliance with the requirements of the granting acts, and that the State is entitled to patents for the granted lands, and you will proceed in the work of the adjustment of the grant accordingly, having due regard to all conflicting claims to the lands.

The affidavits aforesaid are herewith transmitted for filing in your office.

Very respectfully, C. SCHURZ, *Secretary.*

To Commissioner of the General Land Office.

COMPLAINANT'S EXHIBIT "U," Case St. P., M. & M. R'y Co. *v.* N. P. R. R. Co. O. B. Hillis, Ex'r.

88 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *February 6th*, 1872.

Register & receiver, Alexandria, Minn.

GENTLEMEN: I transmit herewith a map showing the line of definite location of the St. Paul & Pacific railroad, St. Vincent Extension, with the ten and twenty mile limits of the land grant made thereto under the act of March 3rd, 1871.

You are hereby to withdraw from sale or location, pre-emption or homestead entry, all the odd-numbered sections falling within those limits and to increase in price to $2.50 per acre all the even-numbered sections within the ten-mile limits and dispose of the same under the pre-emption and homestead laws only and at that ratability, except in cases of settlement under the pre-emption laws made prior to the date of definite location of the road, November 7th, 1871. In such cases you will permit the parties to prove up and pay for their claims either upon odd or even numbered sections at the rate of $1.25 per acre.

The even-numbered sections outside of the ten-mile limits are not affected by the withdrawal.

The right of the railroad company attaches from the date of the

definite location of the road, November 7th, 1871. You will please acknowledge the receipt of this letter by its date.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

89 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *June 25th*, 1872.

Register and receiver, Oak Lake, Minn.

GENTLEMEN: Under date of the 18th inst. the Honorable Secretary of the Interior revoked my order of the 6th of February last to the register and receiver at Alexandria, Minn., directing the withdrawal of certain lands for the benefit of the St. Paul and Pacific R. R., St. Vincent Extension, and instructing you to increase in price to $2.50 per acre all the even-numbered sections within the ten-mile limits of said withdrawal, and to restrict the disposal of such even sections to homestead and pre-emption.

Upon the receipt of these instructions you will hold all the lands affected by said order of withdrawal for the benefit of some other railroad. You will at once publish a notice in two issues of a newspaper of general circulation in your district to the effect that said order of withdrawal has been revoked.

The receiver, acting as disbursing agent, will defray the expenses of such notice and refer on his vouchers to this letter as his authority for the disbursement.

You will please acknowledge the receipt hereof and forward to this office a copy of the paper containing the notice referred to.

Very respectfully, WILLIS DRUMMOND,
Commissioner.

90 U. S. LAND OFFICE, DETROIT, MINN., *May 28th*, 1878.

To the attorney for the St. Vincent Extension St. Paul and P. R. R.:

You will take notice that Charles W. Greenhalgh has this day made application at this office to make proof and payment on the lot 14, sec. 26; lot 6, sec. 36, and lots 3 and 5 and E. ½ S. E. ¼ sec. 35, town. 150, range 47, settled upon June 26, 1872; that on the 22nd day of July, 1878, at this office, in Crookston, at 10 o'clock a. m., said proof will be heard and taken unless cause be shown to the contrary, and at which time you may appear and show cause why such proof and payment should not be made.

THOS. C. SHAPLEIGH, *Register.*

91 "We, James Greenalch and Jacob Myers, of Polk county, Minnesota, do solemnly swear that we have known Charles Greenalch for six years last past, and that he is over the age of twenty-one years and a citizen of the United States, and is an inhabitant of the lot 14, section 26, and lots 3 and 5, E. ½ S. E. ¼, section 35, and lot 1, of section 36, of township number 150 north, of range number 47, and that no other person resided upon the said

land entitled to the right of pre-emption; that the said Charles Greenalch entered upon and made a settlement in person on the said land since the 4th day of September, 1841, to wit, on the 26th day of June, 1872. Since said settlement he has made the following improvements in said tracts, to wit: He has built a log house, 14 x 16 in size, bark and sod roof, board floors, one door and one window, and has lived in the said house and made it his exclusive home from the 26th day of June, 1872, till the present time; that he did not remove from his own land within the State of Minnesota to make the settlement above referred to, and that he has since said settlement plowed, fenced, and cultivated about fifty acres of said land, and in addition thereto has built one log stable, 14 x 22 feet in size.

"JAMES GREENHALCH.
"JACOB MYERS.

"I, Thos. C. Shapleigh, register, do hereby certify that the above affidavit was taken and subscribed before me this 23d day of July, A. D. 1878.

"THOS. C. SHAPLEIGH, *Register*.

"We certify that James Greenhalch and Jacob Myers, whose names are subscribed to the foregoing affidavit, are persons of respectability.

"THOS. C. SHAPLEIGH, *Register*.
"P. C. SHETTEN, *Register*.

"I, Charles Greenhalch, claiming the right of pre-emption under the provisions of the act of Congress entitled 'An act to appropriate the proceeds of the public lands, and to grant pre-emption rights,' approved September 4, 1841, to the lot 4, section 26, and lots 3 and 5, E. ½ S. E. ¼, section 35, and lot 6, section number 36, of township number 150 north, of range number 47, subject to sale at the land office at Detroit, Minnesota, do solemnly swear that I have never had the benefit of any right of pre-emption under this act; that I am not the owner of three hundred and twenty acres of any land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my exclusive use or benefit, and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever by which the title which I may acquire from the Government of the United States would enure, in whole or in part, to the benefit of any person except myself, nor have I heretofore filed for another tract of land.

"CHARLES GREENALCH.

"I, Thos. C. Shapleigh, register of the land office at Detroit, Minnesota, do hereby certify that the above affidavit was taken and subscribed before me this 23d day of July, A. D. 1878.

"THOS. C. SHAPLEIGH, *Register*.

92 "*Pre-emption Proof.*

"Testimony of witness.

"JAMES GREENHALGH, being called as a witness in support of the pre-emption claim of Charles W. Greenhalgh to the lot six, in section 36, town. 150, range 47, testifies as follows:

"Q. What is your post-office address?

"A. Crookston, Polk Co., Minn.

"Q. What is your occupation?

"A. Farmer.

"Q. Are you well acquainted with Charles W. Greenhalgh, the claimant in this case, and how long have you known him?

"A. Ever since he was born.

"Q. How old do you know or believe claimant to be?

"A. Twenty-nine years.

"Q. Is claimant the head of a family or a single person; and, if the head of a family, of whom does the family consist?

"A. Married, and his family consists of himself and wife.

"Q. Is claimant a native-born citizen of the United States? If not, state what steps he has taken to become naturalized.

"A. He is native born.

"Q. Are you acquainted with the land above described?

"A. I am.

"Q. Do you live in the vicinity of the land?

"A. I do.

"Q. Is this land within the limits of an incorporated town or has it been selected as the site of a city or town, and actually settled and occupied for purposes of trade and business?

"A. It is not, and has not been so selected nor used for business or trade.

"Q. Are there any indications of coal, silver, or minerals of any kind on this land? If so, state what they are and whether the springs or mineral deposits are valuable.

"A. None whatever.

"Q. Is the land more valuable for agricultural than mineral purposes?

"A. it is.

"Q. Is the claimant owner of three hundred and twenty acres of land in any State or Territory? State your knowledge in this regard.

"A. He is not. I know his circumstances perfectly well.

"Q. Has the claimant left or abandoned a residence or land of his own in this State to reside upon the land above described? State your knowledge in this regard.

"A. He has not.

"Q. Has claimant ever filed a pre-emption declaratory statement for other land than that above described, or has he heretofore made a pre-emption entry? State your knowledge in this regard.

"A. He has not. I know him and his circumstances perfectly.

"Q. Do you know whether the claimant has given any mortgage on this land or made any agreement to sell the same? State your knowledge in this regard.

"A. He has not, to my knowledge.

"Q. When did claimant first make settlement on the land, and what constituted his first act of settlement?

"A. About the 10th or 15th June, 1872.

"Q. What improvements does the claimant possess on the land, and what is the value of the same?

"A. A house of lumber, a part 14 x 16 and another part 12 x 14 feet, and broke two acres; value, about $300.

"Q. When did claimant first establish a residence upon the land?

"A. At the time of his settlement.

"Q. Has claimant resided upon the land continuously ever since?

"A. He has.

93 "Q. For what purpose has the land been used by claimant?

"A. For farming and gardening.

"How much of the said land, if any, has been broken and cultivated since the claimant made settlement thereon?

"A. Two acres.

"Is it your belief that Charles W. Greenhalgh has acted in good faith in the settlement and improvement of said land under the pre-emption laws? Have you any knowledge to the contrary?

"A. It is my belief, and I know nothing to the contrary.

"Q. Are you interested in this claim?

"A. I am not.

"JAMES GREENHALGH.

"I hereby certify that witness is a person of respectability; that each question and answer in the foregoing testimony was read to him before he signed his name thereto, and that the same was subscribed and sworn to before me this 13th day of May, 1879.

"R. REYNOLDS,

"*Clerk of District Court for Polk County, Minn.*

"*Pre-emption Proof.*

"Testimony of claimant.

"CHARLES W. GREENHALGH, called as a witness on his own behalf in support of his pre-emption claim to the lot 6, in section 36, town. 150, range 47, testifies as follows:

"Q. What is your name? Be careful to give it in full, correctly spelled, in order that it may be written exactly as you wish it written in the patent which you desire to obtain.

"A. Charles W. Greenhalgh.

"Q. What is your age?

"A. Twenty-nine years.

"Q. Are you the head of a family or a single person; and, if the head of a family, of whom does your family consist?

"A. The head of a family, consisting of a wife.

"Q. Are you a native-born citizen of the United States? If not, have you declared your intention to become a citizen, and have you obtained a certificate of naturalization?

"A. A native-born citizen.

"Q. Is the land embraced in your pre-emption claim above described included within the limits of an incorporated town, or has it been selected as the site of a city or town and actually settled or occupied for the purposes of trade and business?

"A. It is not.

"Q. Are there any indications of coal, salines, or minerals of any kind on the land? If so, state what they are or whether the springs or mineral deposits are valuable.

"A. None whatever.

94 "Q. Is the land more valuable for agricultural than mineral purposes?

"A. It is.

"What is your post-office address?

"A. Crookston, Polk county, Minnesota.

"Q. Are you the owner of three hundred and twenty acres of land in any State or Territory?

"A. I am not.

"Q. Have you left or abandoned a residence on land of your own in this State to reside upon the land above described?

"A. I have not.

"Q. Have you ever filed a pre-emption declaratory statement for other land than that above described? If so, give, as nearly as you can, the date thereof and description of the land.

"A. I have not.

"Q. Have you heretofore made a pre-emption entry?

"A. I have not.

"Q. Have you settled upon and improved the land for which you now apply to sell the same on speculation?

"A. I have not.

"Q. Have you given any mortgage upon this land and have you made any agreement to sell the same?

"A. I have not.

"Q. When did you make settlement upon the land and what constituted your first act of settlement?

"A. June 15, 1872, commenced to build a house on this land.

"Q. What improvements, if any, were on the land at date of your settlement? If any, state who owned them and whether they now belong to you.

"A. There were none.

"Q. What improvements have you made on the land subsequent to your first act of settlement? Describe them and state the total value of the improvements owned by you thereon.

"A. Built a frame house 14 x 16 feet and an ell 12 x 14 feet, and broke two acres; total value, three hundred and fifty dollars.

"Q. When did you first establish your residence upon the land?
"A. From the date of settlement, June 15, 1872.
"Q. Have you resided on the land ever since?
"A. I have.
"Q. What use have you made of the land?
"A. Cultivated it.
"Q. How much of the land, if any, has been broken and cultivated since your settlement?
"Two acres on this lot and fifty acres on section 35, said town, claimed by me in connection with this piece.

"CHARLES W. GREENHALGH.

"I hereby certify that each question and answer in the foregoing testimony was read to the claimant before he signed his name thereto, and that the same was subscribed and sworn to before me this 13th day of May, 1879.

[SEAL.] "R. REYNOLDS,
"*Clerk of District Court for Polk Co., Minn.*

95 "I, Charles W. Greenhalgh, claiming the right of pre-emption, under section 2259 of the Revised Statutes of the United States, to lot 6, section 36, of township number 150, of range number 47, subject to sale at Crookston, Minnesota, do solemnly swear that I have never had the benefit of any right of pre-emption under said section; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to my own exclusive use or benefit, and that I have not, directly or indirectly, made any agreement or contract in any way or manner with any person or persons whomsoever, by which the title which I may acquire from the Government of the United States should enure, in whole or in part, to the benefit of any person except myself.

"CHARLES W. GREENHALGH.

"I, Thos. C. Shapleigh, register of the land office at Crookston, Minn., do hereby certify that the above affidavit was subscribed and sworn to before me this 13th day of May, A. D. 1879.

"THOS. C. SHAPLEIGH.

"UNITED STATES LAND OFFICE,
"CROOKSTON, MINN., *May* 13, 1879.

"In the Matter of the Pre-emption Claim of CHARLES GREENALGH to lot 6, sec. 36, 150, 47.

"Declaratory statement number 775, for lot 14, section 26, lot 6, section 36, and lots 3 and 5 and E. ½ S. E. ¼, section 35, T. 150, R. 47, filed on the 9th day of April, 1873, alleging settlement on the 26th day of June, 1872, and reported in the unoffered series.

"Plat of survey filed in this office on the 28th day of February, 1873.

"There are no adverse claims of record.

"Remarks.—Withdrawn for St. Paul & Pacific Railroad, St. Vincent Extension, Co. February 15, 1872.

"THOS. C. SHAPLEIGH, *Register.*

"P. C. STETTEN, *Receiver.*"

96 UNITED STATES LAND OFFICE, *September* 17, 1878.

Hon. Commissioner General Land Office, Washington, D. C.

SIR: I have the honor to transmit herewith the following rejected pre-emption cases, to wit:

John P. Pillard, N. E. ¼, sec. 29, T. 150, R. 46, based on D. S. No. 714, dated March 17th, 1873; settlement alleged July 7th, 1872.

Thomas Bradshaw, N. E. ¼ N. W. ¼, N. W. ¼ N. E. ¼, sec. 34, S. E. ¼ S. W. ¼ and lots 3 and 7 sec. 27, T. 150, R. 47, based on D. S. No. 730, dated March 31st, 1873, alleging settlement August 20th, 1872.

Martin Swenson, lots 5 and 12, section 26, N. ½ N. W. ¼ and lots 1 and 2, sec. 35, T. 150, R. 47, based on D. S. 733, dated April 1st, 1873, alleging settlement July 30th, 1872.

John Darkew, E. ½ N. E. ¼, S. W. ¼ N. E. ¼, and lots 1 & 2, sec. 25, T. 150, R. 47, based on D. S. 747, dated Ap'l 7th, 1873, alleging settlement Aug. 15th, 1872.

Casper Mooser, N. E. ¼ N. W. ¼, lots 5, 6, 7, and 13, sec. 29, T. 150, R. 47, based on D. S. 748, dated April 7th, 1873, alleging settlement July 15th, 1872.

Joseph Barrett, S. W. ¼ S. W. ¼, sec. 29, lot 8, sec. 30, and lot 1, sec. 31, T. 150, R. 46, based on D. S. No. 753, dated Apr. 7th, 1873, alleging settlement June 10, 1872.

Charles Greenalch, lot 14, sec. 26, lots 3 & 5 & E. ½ S. E. ¼, sec. 35, and lot 6, sec. 36, T. 150, R. 47, based on D. S. 775, dated April 9th, 1873, alleging settlement June 26th, 1872.

Louis Johnson, lots 10 and 11, sec. 28, N. W. ¼ N. E. ¼ and lot 1, sec. 33, T. 150, R. 47, based on D. S. 810, dated April 29th, 1873, alleging settlement June 20th, 1872.

Hans C. Johnson, lot 5, S. W. ¼ S. W. ¼, sec. 28, lots 9, 10, 11, and 12, sec. 29, T. 150, R. 47, based on D. S. 812, dated April 29th, 1873, alleging settlement June 20th, 1872.

[Written across the face in red ink:] With entry and proof.

James Greenalch, lots 7, 8, 9, 10, and 11, sec. 33, T. 150, R. 46, based on D. S. 832, dated May 14th, 1873, alleging settlement July 8th, 1872.

Charles Wenzel, N. W. ¼, sec. 1, T. 154, R. 48, based on D. S. 1186, dated Sept. 3rd, 1874, alleging settlement June 1st, 1874.

The foregoing cases were rejected for the reasons that they embrace land in odd-numbered sections within the ten and twenty mile limits of the grant to the St. Paul and Pacific Railroad, St. Vincent Extension, Company, and settlements were not made in said cases until subsequent to the time that the rights of said company attached to the land.

Very respectfully,

THOS. C. SHAPLEIGH, *Register.*

97 "3—2950. DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,
"WASHINGTON, D. C., *May* 6, 1880.

"Register and receiver, Crookston, Minnesota.

"GENTLEMEN: September 17, 1878, you transmitted applications by the following-named parties to make proof on their filing, hereinafter described:

"You rejected the applications in question because of the superior right of the St. Vincent Extension, St. Paul & Pacific (now the St. Paul, Minneapolis & Manitoba) Railroad Company.

"The names of the parties and the lands in question are described as follows:

* * * * * * *

"D. S. 775, Charles W. Greenaleh, lot 14, section 26, lots 3 and 5 and E. ½ S. E. ¼, section 35, and lot 6, section 36, town. 150, range 47; filed April 9, 1873; settled June 26, 1874.

"D. S. 1186, Charles Wenzel, N. W. ¼, section 1, town. 154, range 48; filed September 2, 1874; settled June 2, 1874.

* * * * * * *

"All of the foregoing lands * * * are within the ten-mile limit of the grant to the St. Vincent Extension, St. Paul & Pacific Railroad Company. The road was definitely located opposite the same in September, 1871.

"The parties allege settlement subsequent to the date of definite location of the road. Their filings, so far as they cover the land in odd-numbered sections, are accordingly held for cancellation, subject to appeal.

"In the cases of Pillard, Barrett, and James Greenaleh the lands embraced in their filings are within the indemnity limits of the grant aforesaid.

"Under the decision of the honorable Secretary of the Interior, dated April 7, 1879, in the case of Blodgett *v.* The California & Oregon Railroad Company, these filings will be allowed to remain, subject to the right of the company.

"Should said company fail to select the lands covered by their filings as lieu land upon the adjustment of its road, the claims of Pillard, Barrett, and Greenhaleh might be perfected, but so long as the road remains unadjusted the claims of said parties are incapable of being perfected. Give due notice hereof to the claimants. The attorneys for the company will be advised by this office.

"Very respectfully, J. A. WILLIAMSON,
"*Commissioner.*"

98 "3—2950. DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,
"WASHINGTON, D. C., *November* 24, 1880.

"Register and receiver, Crookston, Minnesota.

"GENTLEMEN: Under date of May 6, 1880, the following applications to make pre-emption proof were considered and rejected, sub-

ject to appeal, because of the withdrawal for the St. Paul & Pacific, St. Vincent Extension (now St. P., M. & M.), Railroad Company.

* * * * * * *

"D. S. 775, Charles W. Greenalch, lot 14, section 26, lots 3 and 5, E ½ S. E. ¼, section 35, and lot 6, section 26, town. 150, range 47; filed April 9, 1873; settled June 26, 1872.

"D. S. 1186, Charles Wenzel, N. W. ¼, section 1, town. 154, range 48; filed September 2, 1874; settled June 2, 1874.

* * * * * * *

"All the foregoing lands * * * are within the ten-mile limits of the grant. * * * The attention of this office has been called to the foregoing applications, and it has been urged that the claims of the parties are confirmed by the act of April 21, 1876.

"The lands within the limit of the grant aforesaid were withdrawn for the benefit of the road by letter of February 6, 1872, which was received at the local office February 15, 1872.

"By letter of June 25, 1872, the withdrawal of February 6, 1872, was revoked and the lands restored to market at $1.25 per acre on authority of a letter from Hon. C. Delano, Secretary of the Interior, dated June 18, 1872. The letter of revocation of former withdrawal was received at your office July 5, 1872.

"The lands were again withdrawn by telegraphic instructions of September 3, 1872, received at your office next day. * * * Charles W. Greenlch settled after the order of restoration had been ordered, but prior to the reception of the same at your office. The proof submitted in these cases shows that the parties settled as alleged, and that they have made valuable improvements on the land covered by their respective filings.

"All of the foregoing parties made pre-emption proof and offered to pay for the same, but were refused by you because their settlements were made subsequent to the definite location of the road.

"The Hon. Secretary, in the case of W. C. Streeter *vs.* M., K. & T. R. R. Co., decided October 12, 1877, held that the words 'pre-emption and homestead entries,' in section one of the act of April 21, 1876, 'refer to the settlements made in good faith by persons possessing the requisite legal qualification, with a view of entering the lands under the provisions of the pre-emption and homestead laws.'

"It is also held that, where a case has not been adjudicated, the act of April 21, 1876, must be applied even in the absence of an application under it. A., T. & S. Fé R. R. *vs.* Dodge, Secretary's decision of Nov. 7, 1878.

"The settlements of the above-named parties, with the exception of Barrett and Wenzel, were made prior to the reception at your office of the second order of withdrawal and while the lands were subject to entry under the stated restoration.

"Their claims are therefore cured by the first section of the act of April 21, 1876.

"In view of the facts as above stated, my decision of May 99 6, except so far as it related to the claims of Barrett and Wenzel, was inadvertent, and was erroneous, in that it failed to take into consideration the provisions of the act of April 21, 1876, as

should have been done under the cited ruling of the Secretary in the case of A., T. & S. F. R. R. Co. *vs.* Dodge.

"The said decision is therefore revoked as to all the parties whose claims are herein stated to be cured by the act of 1876, and should this decision become final the said claimants will be permitted to make entry, the proofs of compliance with law being satisfactory.

"You will so advise the parties in interest. The attorneys for the railroad company will be advised by this office and allowed sixty days for appeal. Barrett settled upon the land June 10, 1872, after the first withdrawal and prior to the order of restoration. The tracts covered by his filing are within the indemnity limits of the grant to said company.

"Wenzel settled June 2, 1874, long subsequent to the definite location of the road. The land covered by his filing is within the granted limits of said road.

"My decision of May 6, holding Wenzel's filing for cancellation and that of Barrett subject to the right of the company, will stand.

"From papers exhibited to this office it appears that notices of my decision of May 6 were given by you September 27, 1880. At the expiration of the time allowed for appeal you will report the action taken by Barrett and Wenzel.

"Very respectfully, J. A. WILLIAMSON,
"*Commissioner.*"

100 "3—2950. DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,
"WASHINGTON, D. C., *April* 6, 1881.

"Register and receiver, Crookston, Minn.

"GENTLEMEN: I am in receipt of appeals by Messrs. Curtis, Earle & Burdett, of this city, attorneys for the St. Vincent Extension, St. Paul & Pacific Railroad Company, from my decision of November 24, 1880, holding, as confirmed by the first section of the act of April 21, 1876, the pre-emption filings of the following parties, to wit:

* * * * * * *

"C. W. Greenhaleh, D. S. 775, for lot 14, section 26, and lots 3 and 5, E. ½ S. E. ¼, section 35, and lot 6, section 36, T. 150, R. 47.

* * * * * * *

"I enclose herewith copies of said appeals and the arguments in support thereof, which you will please serve on the respective appellees, who will be allowed thirty days within which to file arguments for submission to the appellate authority.

"Should any arguments be filed copies thereof must be served upon the attorneys for the company, as required by rules 93, 94, and 96 of the rules of practice.

"Please make prompt report at the expiration of the time specified.

"Very respectfully, C. W. HOLCOMB,
"*Acting Commissioner.*"

101 "DEPARTMENT OF THE INTERIOR,
"GENERAL LAND OFFICE,
"WASHINGTON, D. C., *July* 25, 1882.

"Register and receiver, Crookston, Minnesota.

"GENTLEMEN: By decision of November 24, 1880, this office held that the filings of the following parties came within the provisions of the act of April 21, 1876, and were confirmed thereby, and that the claimants would be permitted to enter the lands without further proof, that already on file being deemed sufficient.

"The names of the parties and the descriptions of the lands applied for are as follows, to wit:

* * * * * * *

"D. S. 775, Charles W. Greenhalgh, lot 14, section 26, lots 3 and 5, E. ½ S. E. ¼, section 35, and lot 6, section 36, township 150, range 47.

* * * * * * *

"Said decision also held the filing of Charles Wenzel, D. S. 1186, covering the northwest quarter of section 1, township 154, range 48, for cancellation.

"The St. Paul, Minneapolis & Manitoba Railway Company, within the limits of whose grant the land is situated, appealed from that part of the decision adverse to it, and Barrett and Wenzel appealed from that part adverse to them.

"Full argument having been filed, the papers in the case were, on August 2, 1881, submitted to the honorable Secretary of the Interior for consideration.

"Under date of the 13th inst. the honorable Secretary rendered a decision in said case in which he affirmed the decision of this office so far as it relates to * * * Charles W. Greenhalgh and Charles Wenzel.

"Accordingly I have this day canceled the filing of Wenzel. * * *

"The records show that the filing of Charles W. Greenhalgh was canceled as to lot 14, section 26, and lot 6, section 36, by letter "G" of this office, dated February 19, 1881, for conflict with the Supreme Court scrip location, R. & R. 44, of one Joseph Simpson. Accordingly you will permit him to enter the tracts in the odd sections only.

"The selection by the railway company, made March 13, 1880, of the tracts in the odd-numbered sections embraced in the filings of * * * Charles W. Greenhalgh has this day been canceled.

"A copy of the decision of the honorable Secretary of the Interior is herewith enclosed.

"The attorneys for the company, Hans C. Johnson, Louis Johnson, and Martin Swenson, have been advised hereof by this office, and the case is closed.

"You will notify the parties in interest, other than those above named, of the action taken.

"Please note upon the entry papers, when issued, a reference to this letter by its initial and date.

"Very respectfully, N. C. McFARLAND,
Commissioner."

102 "No. 2459. LAND OFFICE AT CROOKSTON, MINN.,
"*July* 31, 1882.

"It is hereby certified that, in pursuance of law, Charles W. Greenalch, residing at ——, in Polk county, State of Minnesota, on this day purchased of the register of this office lots 3 and 5 E. ½ S. E. ¼ of section number 35, in township No. 150 north, of range No. 47 west, of the fifth principal meridian, containing 121.25 acres, at the rate of two dollars and fifty cents per acre, amounting to —, for which the said Charles W. Greenalch has made payment in full, as required by law.

"Now, therefore, be it known that on the presentation of this certificate to the Commissioner of the General Land Office the said Charles W. Greenalch shall be entitled to receive a patent for the lot above described.

"JOHN CROMB, *Register*.

"No. 2459. RECEIVER'S OFFICE AT CROOKSTON, MINN.,
"*July* 31*st*, 1882.

"Received from Charles W. Greenalch, of Polk county, Minnesota, the sum of three hundred and three dollars and thirteen cents, being in full for lots 3 and 5 and E. ½ S. E. ¼ of section 35, in township 150 north, of range 47 west, containing 121 acres and 25 hundredths, at two dollars fifty cents per acre.

"$303.13.

"P. C. STETTEN, *Receiver*.

"UNITED STATES LAND OFFICE,
"CROOKSTON, MINN., *August* 22, 1882.

"Hon. Commissioner General Land Office, Washington, D. C.

"SIR: Referring to your letter 'F' of the 25th ult., transmitting copy of the decisions of the honorable Secretary of the Interior in the case of John P. Pillard *et al. v.* The St. Paul, Minneapolis & Manitoba R'y Co., and stating that the filing No. 775 of Charles W. Greenalch was canceled as to lot 14, section 26, and lot 6, section 36, township 150, range 47, by letter 'G' of February 19, 1881, for conflict with the supreme court scrip location R. & R. No. 44, of one Joseph Simpson, and instructing this office to permit Greenhalch to enter the tracts in the odd section only—

"I have the honor to report that, in accordance therewith, Charles W. Greenhalch, on July 31, 1882, made payment for lots 3 and 5 and east one-half S. E. ¼, section 35, township 150, range 47, receiving therefor receipt No. 2459.

"A subsequent examination of the records in the case shows that letter 'G' of February 19, 1881, only canceled lot 14, section 26, and that on May 13, 1879, Charles W. Greenhalgh made proof and payment on lot 6, section 36, township 150, range 47, under his D. S. No. 775, R. & R. No. 790.

"Very respectfully,

"JOHN CROMB, *Register*."

103 Circuit Court of the United States for the District of Minnesota. In Equity.

THE SAINT PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
CHARLES W. GREENHALGH *et al.*

It is hereby stipulated and agreed that the maps produced and used at the hearing of the cause of The Northern Pacific Railroad Company *v.* The St. Paul & Pacific Railroad Company *et al.* in this court, and to be transmitted to the Supreme Court of the United States, and which were used on the hearing of this cause, or copies of the same, may, when so transmitted to said court, be used on the hearing of this cause on the appeal already taken therein; but the hearing of this cause on the appeal shall not be delayed by reason of this stipulation or because of such maps not being returned to the Supreme Court at the time this cause is reached for argument.

Dated October 7, A. D. 1886.

R. B. GALUSHA,
Sol'r for Complainant.
JAMES B. BEALS,
Solicitor for Defendant.

Endorsed: Filed October 8, 1886. Oscar B. Hillis, clerk.

104 And afterwards, to wit, on the 15th day of September, A. D. 1885, the above-entitled cause, together with the case of same complainant against Charles Wenzel, was heard by the court; which proceedings were entered of record in Term Minutes "F," page 764, in the words and figures following, viz:

THE ST. PAUL, MINNEAPOLIS AND MANITOBA R'Y CO.
vs.
CHARLES W. GREENALGH *et al.*

The above-entitled causes regularly coming on for hearingt, he complainant appears by R. B. Galusha, S. U. Pinney, and George B. Young, its solicitors, and the defendants by James B. Beals, said Beals also appearing for the State of Minn. Thereupon said causes are argued by counsel, and, the hearing of the same not being concluded at the hour of adjournment, it is ordered that further proceedings therein be, and they are hereby, postponed until to-morrow morning at 10 o'clock.

105 And afterwards, to wit, on the 16th day of September, A. D. 1885, the following further proceedings were had and entered of record in Term Minutes "F," page 767, said proceedings being in the words and figures following:

THE ST. PAUL, MINNEAPOLIS AND MANITOBA R'Y CO.
vs.
CHAS. WENZEL.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA R'Y CO.
vs.
CHARLES W. GREENALGH *et al.*

The above-entitled causes coming on for further hearing, the parties again appear by their respective attorneys, and, the hearing of said causes not being concluded at the hour of adjournment, it is ordered that further proceedings be, and they are hereby, postponed until to-morrow morning at 10 o'clock.

And afterwards, to wit, on the 17th day of September, 1885, the hearing of said cause was concluded and by the court taken under advisement, the order pursuant thereto being entered in Term Minutes "F," page 770, and in the words and figures following:

THE ST. PAUL, MINNEAPOLIS AND MANITOBA R'Y CO.
vs.
CHAS. WENZEL.

THE ST. PAUL, MINNEAPOLIS & MANITOBA R'Y CO.
vs.
CHAS. W. GREENALGH and JAMES GREENALGH.

106 The above-entitled causes again coming on for further hearing, the parties appear by their respective solicitors, and said causes are further argued by counsel, duly submitted, and by the court taken under advisement.

107 And afterwards, to wit, on the 3rd day of March, 1886, an opinion was filed in this cause, said opinion being in the words and figures following:

Opinion.

108 United States Circuit Court, District of Minnesota.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
CHARLES W. GREENHALGH *et al.*

THE SAME
vs.
CHARLES WENZELL.

These cases are so nearly alike that they may be considered together. The complainant claims to be the equitable owner of certain lands, the legal title to which is in defendants, and files these bills to enforce such claim. Both tracts lie along the line of the St. Vincent Extension of complainant's railway and north of the indemnity limits of the Northern Pacific road. The definite location

of this line was made in 1871, and a map thereof filed with the Secretary of the Interior and approved December 20th, 1871. The Greenalgh land is within ten miles of this line and the Wenzel tract within six miles. The road was built past the Greenalgh land in November, 1872, and finished to St. Vincent by November, 1878. After the filing of the map of the definite location, and on February 15, 1872, the Secretary of the Interior withdrew from sale or other disposal the odd-numbered sections within twenty miles. On June 18, 1872, the Secretary directed the vacation of this order of withdrawal, notice of which was received at the local land office on July 5, 1872. This order of vacation was itself revoked on Sept. 4th, 1872. On June 26th, 1872, Greenalgh settled on the land in controversy in his case, subsequently filed and proved up his claim, and received a patent.

109 Wenzel settled on his tract June 2, 1874, and filed his claim September 2, 1874. The various acts of Congress upon which complainant's title rests were nearly all quoted in the opinion just filed in the case of the Northern Pacific Company *vs.* the complainant, and I shall simply refer to them here.

In the outset defendants challenge the validity of complainant's grant in this upper part of the St. Vincent Extension and upon three grounds:

First, that this was Indian lands in 1857 and therefore never subject to the grant; second, the change authorized by the act of '71 was not in accord with the legislation of Minnesota, and third, the line of definite location was not within the scope of that act. Neither is sufficient.

First. The Indian title was extinguished by treaty May 5th, 1864. The 6th section of the act of 1857 reads:

"SEC. 6. And be it further enacted, That in case any of the lands on the line of said roads or branches are within any Indian territory no title to the same shall accrue, nor shall the same be entered upon by the authority of said Territory or State until the Indian title to the same shall have been established."

Now, in the Lawrence, Leavenworth and Galveston railroad case 92 U. S., 743, the question was whether words of general grant would operate on lands in an Indian reservation created by treaty stipulation, and the court say:

"The grant is silent as to such a purpose, but if it was to take effect in the Osago country on the surrender of the Indian title it would have so declared."

110 This act contained the provision suggested. Under this rule section six opened these lands to this grant when the Indian title ceased, which was before the definite location. The act of 1865, which restored the grant, was passed after the Indian title had been extinguished and operated as a new grant unobstructed. by any prior Indian title.

Second. The case of Nash *vs.* Sullivan, 29 Minn., 206, is conclusive as to the harmony between the act of Congress and the State legislation.

It matters not that that decision was made to uphold a patent title.

The *ratione cessandi* affirms the accord and governs all cases. The action of the State as well as the General Government is an equal affirmation.

Third. Any question that might otherwise exist as to the line of definite location being within the scope of the Congressional grant is put at rest by the act of Congress of March 3, 1873, which declares "that the time for the completion * * * of the road from St. Cloud to St. Vincent, in said State, as now located, with the approval of the Secretary of the Interior, be extended for the period of nine months." I have no doubt of the validity of the complainant's title in this portion of its grant.

Thus far the way is clear, but after all the question in these cases arises under the acts of Congress of June 22nd, 1874, and April 21st, 1876, and of the State of Mar. 1st, 1877, and Mar. 9th, 1878.

It is claimed generally that prior to any final vesting of title in the complainant to these lands, and while the full control and disposal of them remain with Congress, that body exempted
111 them from the operation of complainant's grant, and that the State took similar action. Before examining the acts referred to let us see when, under what circumstances, and to what extent—but for them and for the settlement of defendants—the title to these lands would have passed to complainant. The complainant took nothing by the withdrawal. A withdrawal passes no title. It only prevents other titles from accruing. A definite location of the road identifies the tracts within the place limits, and a title thereto passes by relation as of the date of the grant, subject to defeasance upon failure to perform the conditions of the grant within the time limited; the title to indemnity lands passes only upon selection. Wenzel's land was within the place limits; Greenalgh's not; for since the decisions in St. Paul R. R. Co. *vs.* Winona R. R. Co., 112 U. S., 730, and Winona R. R. Co. *vs.* Barney, 113 U. S., 628, it must be considered as settled that the grant of lands in place was limited to six sections, and that the additional four sections were simply a grant by quantity. The selections of the Greenalgh land was made by the company on Mar. 13, 1880, long after the several acts referred to and long after Greenalgh's entry. Until that time the company had no pretence of title, and all that it can claim is that under the existing laws and withdrawal no one else could acquire any interest therein prior thereto. As to Wenzel's tract, the definite location operated to transfer as of the date of the grant the title to the company, subject to forfeiture on failure to build the road within the time limited.

After such failure the grantor had power to forfeit the
112 grant and retake the land. Having power to forfeit the entire grant absolutely, it had the lesser and included power of forfeiting a part and conditionally.

The act of June 22nd, 1874, by its first section extends the time for the completion of this road to March 3, 1876, and "no longer, upon the following conditions: That all rights of actual settlers and their grantees who have heretofore in good faith entered upon and actually resided on any of said lands prior to the passage of this act or

who otherwise have legal rights in any of such lands shall be saved and secured to such settlers or other persons in all respects the same as if said lands had never been granted to aid in the construction of the said lines of railroad."

The second section requires acceptance by the company as a condition of receiving the benefits of the act. No acceptance was ever made. The first and third sections of the act of April 21, 1871, read as follows:

"SEC. 1. All pre-emption entries, or entries in compliance with any law of the United States, of the public lands made in good faith by actual settlers upon tracts of land of not more than one hundred and sixty acres each within the limits of any land grant prior to the time when notice of the withdrawal of the lands embraced in such grant was received at the local land office of the district in which such lands are situated, or after their restoration to market by order of the General Land Office and where the pre-emption laws have been complied with and proper proofs thereof have been made by the parties holding such tracts or parcels, *they* shall
113 be confirmed, and patents for the same shall issue to the parties thereto."

"SEC. 3. All such pre-emption entries which may have been made by permission of the Land Department, or in pursuance of the rules and instructions thereof, within the limits of any land grant at a time subsequent to expiration of such grant shall be deemed valid, and a compliance with the laws and the making of the proof required shall entitle the holder of such a claim to a patent therefor." U. S. Stat., secs. 206, 207, 208. Section 10 of the State act of Mar. 1, 1877, provides that the complainant "shall not in any manner, directly or indirectly, acquire or become seized of any right, title, interest claim, or demand in or to any piece or parcel of land * * * upon which any person or persons have in good faith settled and made or acquired valuable improvements thereon on or before the passage of this act;" that the Governor shall deed and relinquish such lands to such settlers, and also that "upon the acceptance of the provisions of this act by said company it shall be deemed by the Governor of this State as a relinquishment by said company of all such lands so occupied by such actual settlers." No acceptance as above provided for was ever made by the company. Section 3 of the act of March 9, 1878, which is an act amendatory of the act of 1877, contains a provision that "nothing shall be construed under this act which will waive the right of the State to receive the full grant of ten sections per mile of completed road from the United States," and also that upon the completion of a certain named portion of the line "the Governor of the State may convey or cer-
114 tify to such company all the rest, residue, and remainder of the lands granted by the United States to the State of Minnesota to aid in the construction of said line of railroad."

I believe this brings all the material facts before us for consideration. With reference to the act of June, 1874, it may be regarded on the one hand as merely a proposition calling for acceptance, and, no acceptance being given, wholly without force; on the other hand,

as a declaration by the owner of the land of the conditions upon which alone the proffered grant then subject to forfeiture would be continued in force; in fact, a legislative declaration of forfeiture of an existing but unearned grant coupled with a tender of a new grant upon certain conditions, the acceptance provided for being only the ordinary anticipatory declaration of an intent to comply with the conditions upon which the grant was made, the formality of which is waived by an actual compliance with the conditions.

So the act of March, 1877, may be subject to the like criticism of being simply an offer without acceptance, and to the further criticism of an implied repeal by the act of March, 1878, which affirms the right of the State to the entire grant from the United States, and authorizes its conveyance to the company upon the completion of a specified portion of the road. On the other hand, it may be said that the act of 1877, in direct and explicit terms, as was within the power of the Legislature to do, takes from the company every tract occupied by *bona fide* settlers; that the purpose of the acceptance was only information to the Governor and to guide his official action, and in no manner limited the legislative transfer to *bona fide* settlers of all rights and interests in these tracts under
115 the grant from the United States; that the act of 1878, being in terms only an amendment of that of 1877 and containing no express appeal of said section 10, is to be construed in harmony therewith, and means simply to authorize a transfer to the company of all lands within the grant not otherwise disposed of by the provisions of the act.

With reference to the act of April, 1876, it may be urged that the term "entry" means the filing of the claim with the land office, and not the mere settlement on the land; that Greenalgh's entry was not made during the revocation of the withdrawal; that his settlement, though after the order of revocation, was prior to the receipt of that order at the land office, and therefore prior to the actual restoration to market; that while Wenzel's settlement was made after the expiration of the time limited for the building of the road, yet his entry was not until after the act of June 22, 1874, extending the time, and thus while the grant was in full force; further, that the words "such pre-emption entries," in section 3, refer to entries of the kind named in sections 1 & 2, and mean only entries prior to the receipt at the local land offices of the notices of withdrawal or after the restoration to market, and therefore do not cover a settlement or entry like his; and, finally, that under the decision in Schulenberg *vs.* Harrimon, 21 Wall., 62, a decision prior by some three years to the act of 1876, a grant does not expire by the mere non-performance of a condition subsequent, but only upon some legal forfeiture, and hence that said third section has no application to the present case, On the other hand, it may be said that the term "entry" in its general use signified a settlement with a view to purchase or homesteading.

116 That at any rate it relates back to the time of such settlement and has force from that date and obviously is used here to cover and protect rights originating from the settlement; that

both withdrawals and vacations thereof date and have operative force from the time they are ordered at Washington and not from the time notices thereof are received at the local land offices; that if Wenzel's entry was not technically until after the act of June 22, 1874, extending the grant, it was protected by the very terms of that extension; that the words "such pre-emption entries," though referring back, only mean pre-emption entries in good faith by actual settlers and do not include all the circumstances attending such entries as are named in the prior sections, and that the expression "expiration of grant" must refer to the time limited in the original granting act for the performance of the condition, for if it referred to the actual forfeiture it would be meaningless, as then the land would be covered by the general acts for disposal of public lands. I have thus endeavored to outline the principal suggestions on both sides in reference to the force and effect of these several statutes. I propose no further comment on them separately, but state some propositions based upon them collectively:

First. All were passed after the time given for the completion of the road, when there had been a non-performance of the conditions of the grant, and when, therefore, there existed the right of absolute and total forfeiture by the grantor, the United States, and of resumption and transfer by the State to another beneficiary.

Second. Nothing can be plainer than that both Congress and
117 the State Legislature intended to give to actual *bona fide* settlers priority to the railroad company. Such intent breathes in every statute and permeates every section.

Third. All legislative land grants are to be regarded not merely as contracts, but also as laws. As such they are subject to the same rules of interpretation that govern other laws, and a primary rule is that the intent of the legislator is to be sought and when ascertained controls. The technical rules which govern the interpretation of private contracts must always yield to the single enquiry of the intent of the one party, the Legislature.

Fourth. The legal title is in the defendants. Complainant rests upon its alleged equitable rights. There is no equity in striking down a legal title when so to do involves a disregard of the manifest intent of the original owner, grantor of such legal title.

Decrees will be entered in favor of the defendants, dismissing the bills at costs of complainant.

Endorsed: "Filed March 3rd, 1886. Oscar B. Hillis, clerk."

118 And afterwards, to wit, on the 3rd day of March, A. D. 1886, the following order for decree dismissing bill at complainant's cost was entered of record in Term Minutes "G," page 160, in the words and figures following, viz:

Order for Decree of Dismissal.

United States Circuit Court, District of Minnesota.

Term Minutes, December Term, A. D. 1885, March 3, 1886.

Present: Hon. David J. Brewer and Hon. R. R. Nelson, judges.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
CHARLES WENZEL.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
CHARLES W. GREENHALGH and JAMES GREENHALGH.

The above-entitled causes having been heretofore fully heard upon the pleadings, final proofs, agreed statement of facts, and arguments of counsel, duly submitted, and by the court taken under advisement, now, the court, after due consideration thereof and being fully advised in the premises, announces its decision concerning the same and files said decision in writing herein. Pursuant to said decision it is considered, ordered, and adjudged by the court that a decree be entered herein "in favor of the defendants dismissing the bill at the cost of complainant."

119 And afterwards, to wit, on the 4th day of March, A. D. 1886, the following final decree was filed and entered of record in Term Minutes "G," page 167, in the words and figures following, viz:

Final Decree and Order Allowing Appeal.

United States Circuit Court, District of Minnesota.

Term Minutes, December Term, A. D. 1885, March 4th, 1886.

THE ST. PAUL, MINNEAPOLIS AND MANITOBA RAILWAY COMPANY
vs.
CHAS. W. GREENALGH & JAMES GREENALGH.

This cause came on to be heard upon the pleadings and proofs and agreed statement of facts, and was argued by counsel for the respective parties, and upon consideration thereof it is now here adjudged and decreed that the said complainant's bill of complaint in this cause be, and the same hereby is, dismissed for want of equity, with costs, to be taxed against said complainant and in favor of said defendant.

And thereupon, the said complainant praying an appeal to the Supreme Court of the United States, the same is hereby allowed upon said complainant filing a bond with sureties in the sum of five hun-

dred dollars, conditioned according to law, to be approved by a judge of this court.

DAVID J. BREWER,
Circuit Judge.

120 And afterwards, to wit, on the 11th day of March, A. D. 1886, the following bond on appeal was filed and entered of record in this cause, said bond being in the words and figures following, viz:

Bond on Appeal.

Supreme Court of the United States.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY
vs.
CHARLES W. GREENALGH and JAMES GREENALGH.

Know all men by these presents that we, H. C. Ives and A. L. Mohler, of the city of Saint Paul, in the State of Minnesota, are held and firmly bound unto Chas. W. & Jas. Greenalgh, of Marshall county, in said State, in the sum of five hundred dollars, to be paid to the said Chas. W. & Jas. Greenalgh, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 8th day of March, A. D. 1886.

Whereas the above-named Saint Paul, Minneapolis and Manitoba Railway Company hath taken an appeal to the Supreme Court of the United States to reverse the decree made and rendered in the above-entitled cause by the circuit court of the United States for the district of Minnesota:

Now, therefore, the condition of this obligation is such that if the above-named Saint Paul, Minneapolis and Manitoba Railway Company shall prosecute its said appeal to effect and answer all
121 costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

H. C. IVES. [SEAL.]
A. L. MOHLER. [SEAL.]

Sealed and delivered in the presence of—
R. B. GALUSHA & HENRY KROGSTEAD.

DISTRICT OF MINNESOTA, *ss:*

H. C. Ives and A. L. Mohler, of the city of Saint Paul, in said district, each for himself, being duly sworn, says that he is worth the sum of one hundred thousand dollars over and above all debts by him owing in property situated in said district not exempt by law from execution, and that he is a resident and freeholder of said city of St. Paul; and further saith not.

H. C. IVES.
A. L. MOHLER.

Subscribed and sworn to before me this 8th day of March, 1886.
[SEAL OF NOTARY.] HENRY KROGSTEAD,
Notary Public, Ramsey County, Minnesota.

Endorsed on back: "Approved in open court March 11th, 1886. David J. Brewer, circuit judge. Filed March 11th, 1886. Oscar B. Hillis, clerk."

122 UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, *ss*:

I, Oscar B. Hillis, clerk of said circuit court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 121 pages, numbered consecutively from 1 to 121, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final decree, and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said court.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 9th day of October, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States the one hundred and eleventh year.

[U. S. Circuit Court Seal, Dist. of Minnesota.]

OSCAR B. HILLIS, *Clerk*,
By L. P. RICHARDSON, *Deputy*.

Endorsed on cover: Minnesota C. C. U. S. No. 245. The St. Paul, Minneapolis & Manitoba Railway Company, appellant, *vs.* Charles W. Greenalgh and James Greenalgh. Filed October 25, 1886.

Office Supreme Court, U. S.
FILED
OCT 13 1890
JAMES H. McKENNEY,
CLERK

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 24.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, *Appellant*,

vs.

CHARLES W. GREENALGH AND JAMES GREENALGH.

BRIEF FOR APPELLANT.

S. U. PINNEY,

Of Counsel for Appellants.

JOURNAL PRINTING CO., PRINTERS AND STEREOTYPERS, MADISON, WIS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. .

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, *Appellant*,

AGAINST

CHARLES W. GREENALGH AND JAMES GREENALGH.

STATEMENT.

The complainant brings this suit claiming to be the full owner of the lands in question, and that the legal title thereto became vested in the state of Minnesota, under the act of Congress of March 3, 1857, March 3, 1865, and March 3, 1871 (11 U. S. Stat., 195; 13 U. S. Stat., 526; 16 U. S. Stat., 588); and that it subsequently vested in complainant, and to cancel a pretended claim of title on the part of the defendants thereto.

The definite location of the line of road was made and filed November 18, 1871, approved December 19, 1871, and the lands in question are within the primary or place limits of the grant, and it is claimed that the complainant, as the grantee, assignee and successor of the St. Paul & Pacific

Railway Company, is entitled to the lands, the same having been earned by the building of the road in question.

The road was completed opposite these lands in November, 1872. The defendant, Charles W. Greenalgh, claims that he made a settlement on the lands June 26, 1872, and afterwards filed a pre-emption claim thereto and proved up the same on or about the 6th of May, 1878, and having made full payment, a patent was issued to him of the lands. The proofs in support of his pre-emption show that his settlement was made June 15, 1872. O. Rec., 92, 94. His declaratory statement was dated and filed April 9, 1873. O. Rec., 97. After making his proofs, and *before patent*, he conveyed the premises to the defendant, James Greenalgh.

The facts in relation to the definite location of the line of the St. Paul & Pacific Company filed as aforesaid and the accompanying legislation have been fully set forth and stated in case No. 54, of *St. Paul & Pacific Railroad Company and others, appellants, against the Northern Pacific Railroad Company.* Particular reference to them is not necessary inasmuch as the lands in controversy are situated in township one hundred and fifty (150) north, of range forty-seven (47) west, in Polk county, Minnesota, being more than thirty miles north of that portion of the line of the St. Vincent branch which was altered pursuant to the act of Congress of March 3, 1871, and north of the point of intersection of the line of the original grant mentioned in the act of March 3, 1871. The line of definite location under which complainant claims was filed November 18, 1871, and was approved on the 19th day of December of the same year. The seventh section of the act of March 3, 1865, amendatory of the act of March 3, 1857, provided:

"As soon as the governor of said state of Minnesota shall file or cause to be filed with the Secretary of the Interior maps designating the routes of said roads and

branches, then it shall be the duty of the Secretary of the Interior to withdraw from market the lands embraced within the provisions of this act.

After the location of the line the Secretary withdrew all lands in odd-numbered sections within twenty miles of the line of said definite location from sale or other disposition from and after the 15th day of February, 1872, and notice was given to the local land office February 6, 1872. O. Rec., 88, 96, 98.

On the 25th of June, 1872, the Secretary of the Interior assumed the authority to make an order vacating said withdrawal. The proofs show, as before stated, that the original withdrawal was in full force when Greenalgh made his settlement June 15, 1872. On the 3d of September, 1872, the Secretary of the Interior vacated his order of June 25, 1872, and reinstated said withdrawal. This order was not notified to the local office at Crookston until the 5th day of July, 1872. The time limited by act of Congress for the completion of the St. Vincent branch was extended by said act of March 3, 1865, eight years, and until March 3, 1873, and by the act of March 3, 1873 (17 U. S. Stat., 631), it was further extended for the period of nine months; and this act also legalized the location of the line as then located with the approval of the Secretary of the Interior. The legal title to the lands in controversy by virtue of the grant in question and the definite location of line of road had vested in the State, and until entry for breach of condition subsequent should occur, the United States could have no title that could be subject to the operation of the general laws for the sale and disposition of the public domain. It had simply *a right of entry* for breach of condition subsequent, and this was the condition of affairs when Greenalgh made his settlement, and also when he filed his declaratory statement. The grant had not then expired in any sense whatever. The defendant,

Charles W. Greenalgh, having made a conveyance of the premises to James Greenalgh, and having afterward obtained a patent of the premises, the complainant seeks a decree declaring and establishing its equitable rights in the premises and for a declaration of invalidity of the claim of the defendants to said land.

The answer raises divers questions with regard to the said act of Congress of March 3, 1871, that it was not in accord with the legislation of Minnesota; that the lands appertaining to the branch from Lake Superior to a point at or about St. Cloud had been forfeited and lost to the St. Paul & Pacific Company and had been granted to the Minneapolis & St. Cloud Railroad Company, and denies that the St. Paul & Pacific Company could make the releases of such lands contemplated by the act of March 3, 1871. Further, also, that the part of the line re-located did not connect with the line of the original grant at or near Otter Tail or Rush Lake, or at any point within about twenty-five miles thereof. It also relies upon sections 1 and 3 of the act of Congress of April 21, 1876, and upon the order of the Commissioner of June 25, 1872, purporting to vacate the withdrawal of February 15, 1872, for the benefit of the railroad company. It also insists on deviations of the line of the road as constructed from the located line, and a considerable testimony was taken on that subject. The greatest deviation is opposite the lands in question and is a distance of nine and one-half miles. O. Rec., 44a. It also insisted that the premises in question were within the Indian territory when the said act of March 3, 1857, took effect, but the Indian title thereto was extinguished by treaty made October 3, 1863, ratified by the Senate and proclaimed May 5, 1864, prior to the passage of the said act of March 3, 1865. And the act of March 3, 1857, section 6, provided:

"That in case any lands on the line of said roads or branches are within any Indian territory no title to the

same shall accrue nor shall the same be entered upon by the authority of said territory or state until the Indian title to the same shall have been extinguished."

A considerable testimony was taken with regard to the occasion for deviation of the constructed line from the located one (P. Rec., 50–68); but it is not deemed material to notice it. That the road was built according to the provisions of the acts of Congress and accepted appears. P. Rec., 71–77. Letters of the Secretary of the Interior 4th December, 1873, the Commissioner of the General Land Office May 27, 1880, and of the Secretary of the Interior June 10, 1880, in addition to the foregoing statement by the stipulation of facts (P. Rec., 49, 50 and 68–70 inclusive), the title of the complainant is admitted substantially subject to these objections, and among other things it is admitted that the complainant's road was completed along and opposite to the land in question before the defendant Charles W. Greenalgh filed his pre-emption claim thereto. After the road was finished and on July 24, 1880, the Governor executed to the United States a deed of relinquishment of the lands in question with others within the limits of the grant, claiming the right to do so under section 10 of Act of Legislature of Minnesota, March 1, 1877. Special Laws of Minn., 1877, ch. 201.

The claim of the defendant Charles W. Greenalgh was brought before the Commissioner of the General Land Office and by appeal before the Secretary of the Interior (P. Rec., 84–89); and the Secretary of the Interior affirmed the decision so far as the claim of the defendant Charles W. Greenalgh was concerned, sustaining his claim July 31, 1882, and he made full payment and received a patent receipt therefor. A patent was issued to him for the land December 20, 1883. The circuit court, for the reasons stated in its opinion, dismissed complainant's bill in both cases. P. Rec., 91–96.

ASSIGNMENT OF ERRORS.

1st. The circuit court erred in dismissing the complainant's bill.

2d. The circuit court erred in refusing to grant the complainant the relief prayed for in and by its bill.

3d. The circuit court erred in holding that the act of Congress of April 21, 1876, sections 1 and 3, applied to the facts of this case. U. S. Stat., secs. 206–208

4th. The circuit court erred in holding that the act of Congress of June 22, 1874, applied to or constituted any objection to the relief prayed for.

5th. The circuit court erred in holding that the acts of the Legislature of the State of Minnesota of March 1, 1877, and March 9, 1878 (Ch. 71, Special Laws Minn., 1878, secs. 1–3), constituted any objection or obstacle to granting the plaintiff the relief prayed for. Ch. 201, Special Laws Minn., 1877, sec. 10.

6th. The circuit court erred in deciding that the legal title to the lands in controversy is in the defendants.

First.

It is so entirely plain that the legal title to the lands in question vested in the state of Minnesota in trust for railway purposes before the defendant Greenalgh made his settlement, June 15, 1872, and that the Saint Paul & Pacific Railroad Company was recognized as the beneficiary of the grant by the act of March 3, 1871 (16 U. S. Stat., 588), that a brief statement of the facts is all the argument necessary to establish this point.

The line of definite location was filed in the Department of the Interior as required by the act of March 3, 1865, (sec. 7, 13 U. S. Stat., 526), and approved by the Secretary of the Interior December 19, 1871.

The bill so charges, and these allegations are admitted by stipulation (O. Rec., 23, 44*a*), that:

"After the definite location of the branch line of its road from St. Cloud to St. Vincent, filed and approved in the department of the interior, on the 19th day of December, A. D. 1871, the officers of said department, under the direction of the Secretary of the Interior, prepared a map indicating and showing the ten-mile limits of said grant along said line, and that immediately upon said location and approval, the title to all odd-numbered sections within said limits became and was vested in fee-simple in the state of Minnesota for the use and benefit of said St. Paul & Pacific Railroad Company, through and under which your orator claims to have and own said odd-numbered sections; that copies of said map indicating said place limits and said odd-numbered sections as aforesaid *were immediately thereafter furnished* to the officers of the local land offices along said line in the several districts in which said lands were situate, to wit, at St. Cloud, at Detroit and at Crookston, in the said state of Minnesota; and that by circular letters addressed to said land officers, all lands in odd-numbered sections within twenty miles of the line of said definite location were withdrawn from sale or other disposition at said land offices, from and after the 15th day of February, A. D. 1872."

This notice was received at the local office of the district in which these lands were then situated February 6, 1872. O. Rec., 98.

This location was recognized and held lawful by the court below, and full effect was given to the act of Congress March 3, 1873 (17 U. S. Stat., 631), confirming the location and extending the time of the Saint Paul & Pacific Railroad Company "for the completion of the road from Saint Cloud to Saint Vincent for the period of nine months (until December 3, 1873), *as now located*, with the approval of the Secretary of the Interior." The court below added: "I have no doubt of the validity of the complainant's title to this portion of its grant." The objection that these lands were Indian lands March 3, 1857, and

therefore never subject to the grant, was properly ruled against the defendants, the court saying:

"The Indian title was extinguished by treaty May 5, 1864. The sixth section of the act of March 3, 1857, reads as follows:

"Section 6. And be it further enacted, that, in case any of the lands on the line of said roads or branches are within any Indian territory, no title to the same shall accrue, nor shall the same be entered upon by the authority of said territory or state until the Indian title to the same shall have been extinguished."

"Now in the *Lawrence, Leavenworth & Galveston Railroad Case*, 92 U. S., 743, the question was whether words of general grant would operate on lands in an Indian reservation created by treaty stipulation, and the court say: 'The grant is silent as to such a purpose; that if it was to take effect in the Osage country, it would have so declared.'

"This act contains the provision suggested. Under this rule, section 6 opened these lands to this grant when the Indian title ceased, which was before the definite location. The act of March 3, 1865, which restored the grant, was passed after the Indian title had been extinguished and operated as a new grant unobstructed by any prior Indian title."

See also, *United States v. Cook*, 19 Wall., 593; *Beecher v. Wetherby*, 95 U. S., 517, 522, 525, 526.

The court held also that the act of March 3, 1871, was in accord with the legislation of Minnesota. O. Rec., 109, 110.

When the line of the road was definitely located the title to the lands passed at once as of the date of the grant to the state of Minnesota in trust for the St. Paul & Pacific Railroad Company.

Van Wyck v. Knevals, 106 U. S., 365, 370.

The act of Congress of March 3, 1865, section 7, provided

"That as soon as the Governor of said state of Minnesota shall file, or cause to be filed, with the Secretary of the Interior, maps designating the routes of said road or branches,

then it shall be the duty of the Secretary of the Interior *to withdraw from market the lands embraced within the provisions of this act.*"

This duty he performed and notified the withdrawal to the local office February 6, 1872.

"But if he had neglected this duty the neglect would not impair the rights of the company, however prejudicial it might prove to others. Its rights are not made dependant upon the issue of the Secretary's order, or upon notice of the withdrawal being given to the local land offices."

Van Wyck v. Knevals, 106 U. S., 367.

The Secretary had thus exhausted his authority, the title had lawfully vested in the State, and it was beyond his power to vacate the withdrawal and restore the title to the United States. The withdrawal operated by virtue of the act of Congress, and it could be vacated and the title resumed only by an act of the same authority or by a direct proceeding for that purpose.

Moore v. Robbins, 96 U. S., 533, 534.

Orton v. Southern Pac. Railroad Co., 6 Sawy., 157, 179, 198.

"The legal title under the land goes to the state, but the equitable right vests in the company. *The state cannot dispose of the lands;* she simply holds them for the use and benefit of the company; the act of Congress providing how her trust shall be discharged and the legal title be conveyed to the company."

Van Wyck v. Knevals, 106 U. S., 365.

The complainant earned the lands by completing the road opposite to and coterminus with these lands, before the time limited by act of Congress had expired, namely, in November, 1872, before the defendant Greenalgh filed his declaratory statement, which was April 9, 1873. The completion of the road was certified by the Governor to the Secretary of the Interior November 23, 1873. O. Rec., 80.

It is difficult to see any reason why the complainant did not get full title to these lands.

The court below, however, held upon what it considered the authority of *Winona & St. Peter Railroad Co. v. Barney*, 113 U. S., 627, 628, that the complainant failed to show title for want of proof of selection of the lands as they are beyond the six miles place limits under the act of March 3, 1857, but within the ten miles limit as increased by the act of March, 1865; but this misapprehension was corrected by the decision in *Barney v. Winona & St. Peter Railroad Company*, 117 U. S., 230, 231, subsequently decided.

SECOND.

From and after the completion of the road opposite to and coterminous with these lands, the Saint Paul & Pacific Railroad Company was the full equitable owner of the fee-simple title thereto, the state holding the naked legal title thereto in trust for the company.

The right thus vested in it and in the complainant as the grantee and successor in interest of the Saint Paul & Pacific Company could not be taken away, either by act of Congress or of the state legislature.

1. The act of Congress subsequently passed June 22, 1874 (18 U. S. Stat., 81), has no bearing whatever on the case for two reasons: First, because it does not assume to operate upon rights previously vested. Second, because it was not to be operative at all, without the assent of the Saint Paul & Pacific Railroad, and this it is not pretended was ever given.

2. The act of Congress of April 21, 1876 (U. S. Stat., sec. 206), was passed after the rights of the company had become vested and it could not operate to impair its rights in the least.

This is as follows:

"Sec. 1. All pre-emption entries, or entries in compliance with any law of the United States, of the public lands,

made in good faith, by actual settlers, upon tracts of land of not more than one hundred and sixty acres each, within the limits of any land grant, prior to the time when notice of the withdrawal of the lands embraced in such grant was received at the local land office of the district in which such lands are situated, or after their restoration to market by order of the general land office, and where the pre-emption laws have been complied with, and proper proofs thereof have been made by the parties holding such tracts or parcels, they shall be confirmed, and patents for the same shall issue to the parties entitled thereto."

"Sec. 2. When at the time of withdrawal, as stated in the preceding section, valid pre-emption claims existed upon any lands within the limits of any such grants which afterward were abandoned, and under the decisions and rulings of the land department, were re-entered by pre-emption claimants who have complied with the laws governing pre-emption entries, and shall make the proper proofs required under such laws, such entries shall be deemed valid, and patents shall issue therefor to the person entitled thereto."

"Sec. 3. All such pre-emption entries which may have been made by permission of the land department, or in pursuance of the rules and instructions thereof, within the limits of any land grant at a time subsequent to expiration of such grant, shall be deemed valid, and a compliance with the laws and the making of the proof required shall entitle the holder of such a claim to a patent therefor." U. S. Stat., §§ 206, 207, 208.

This case is not within the statute relied on, first, because the pre-emption in this case was not made before but after notice of the withdrawal of these lands was received at the local land office. The settlement was after notice of such withdrawal, June 15, 1872, and before and not after the alleged restoration of the lands by the illegal and lawless order of the Secretary of the Interior of June 25, 1872. It is untruly alleged to have been made on the following day, but the proofs show the falsity of this allegation as already noticed. Besides the "restoration" intended in this section is one that *restores*, and not a pretended one which is a mere nullity. Furthermore, the order of the Secretary, dated in fact June 18, 1872, but notice of which was given by the

Commissioner of the General Land Office under date of July 25, 1872, does not direct the lands to be restored, and the notice of the Commissioner to the local officers simply directs them to hold "all lands affected by said order of withdrawal *for the benefit of some other railroad.*" O. Rec., 89.

3. The entry or declaratory statement was not filed until April 9, 1873, long after the order of September 3, 1872, was made, purporting to restore the withdrawal, which it was erroneously assumed had been vacated, and not until the rights of the company as full equitable owner of the fee had become absolute and vested and the naked legal title was held in trust and for its benefit.

The company thus occupied the position of a purchaser, having made full payment.

This right as against the government dealing with the land is equivalent to a patent issued.

Starks v. Starrs, 6 Wall., 402, 418.
Barney v. Dolph, 97 U. S., 652, 656.

"The execution and delivery of the patent after the right to it is complete are the mere ministerial acts of the officer charged with that duty."

When Greenalgh made his settlement, the title to these lands was in the state of Minnesota, in trust for the railroad company, and his entry and settlement was a lawless act, a trespass which could not become the foundation of any legal right. Congress had no power after the company had earned the lands to pass any act to affect or impair its rights.

4. It is not pretended that the grant had expired when Greenalgh made his entry so as to bring his case, even colorably, within section 208, U. S. Stat.

By the act of Congress of March 3, 1865, section 6, the quantity that might be certified was increased to the

amount of ten sections per mile upon the completion of any section of ten consecutive miles of road.

To the same effect is section 3 of the act of Congress of July 13, 1866. 14 U. S. Stat., p. 97.

By the act of the legislature of Minnesota (Laws of Minnesota, 1865, approved March 2, 1865, section 2), it was provided that:

"It shall be the duty of the Governor, on behalf of the state, to convey to said company the lands so granted, according to the terms and provisions contained in the act or acts aforesaid."

The statute of Minnesota, Special Laws of 1862, approved March 10, page 251, section 6, provides for conveyances to be executed of certain portions of the lands as definite sections of the road are completed.

The act of Congress of July 13, 1866 (14 U. S. Stat., 97), prescribed the rule of disposition, namely: Section 4.

"That the lands granted specifically lying in place on any division of ten miles of road shall not be disposed of until the road shall be completed through and coterminous with the same: provided, however, that this provision shall not extend to any lands authorized to be taken to make up deficiencies."

The St. Paul & Pacific Railroad Company had the full, equitable title to the lands in question in this case in November, 1872, and the act of the legislature of Minnesota, March 1, 1877, could have no application to this tract of land. Special Laws of Minnesota, 1877, ch. 201.

THIRD.

It was not the intention of chapter 201, Laws of Minnesota, 1877, approved March 1, 1877, to affect in any way the vested rights which the St. Paul & Pacific Company had acquired to the lands theretofore earned by it; nor was it within the power of the state to do so.

I. The lands in question having been fully earned, the state by the act of March 1, 1877, section 10, could not, as it

clearly did not intend to, interfere with the vested title of the company. That section assumes to give rights to pre-emptioners in the lands only "to which legal and full title has not been perfected in said St. Paul & Pacific Railroad Company, or their assigns." These qualifying words were doubtless used in consequence of a then recent decision of the supreme court of the state made October 16, 1876, in which an act of the state of 1874 charging the lands along this very portion of the line with debts contracted due for its construction, was held void because impairing the company's vested right to the lands under the state act of 1865.

DeGraff v. St. Paul & Pacific R. R. Co., 23 Minn., 144.

The first five sections of this act have no relation to the branch road from St. Cloud to St. Vincent, but relate entirely to the road from Watab to Brainerd.

The sixth section extended the time for completing the line of road from St. Cloud to St. Vincent:

"From Melrose to Sauk Centre, until July 1, A. D. 1878;

"From Sauk Centre to Alexandria, until January 1, A. D. 1879;

"From Alexandria to Fergus Falls, and from Crookston to St. Vincent, until January 1, A. D. 1880;

"From Fergus Falls to Glyndon, until January 1, A. D. 1881.

"*Provided*, however, that such extensions of time are made subject to all the provisions of this and the succeeding sections of this act."

The section then provides for forfeiture of the grant, franchises, etc., for failure to comply with the extensions of time, and authorizing the Governor —

"To enter upon and take possession, for and in the name of the state, of all and singular the portions of the road *so remaining uncompleted*, and all and singular the land grant, rights, franchises, immunities and property appertaining thereto, . . . to be used and re-granted for the construction of said line of road."

It then provides in such, case, for any other company or

corporation organized, or that might thereafter organize, to succeed to such grant and rights and to complete the road, and for forfeiture on its part in case of its failure to perform.

The ninth section provides for a specific disposition of one-half of all the lands up to four hundred thousand acres which should be first acquired on account of the construction of the *present uncompleted* line of railroad from Crookston to St. Vincent, or any part thereof, to certain specific purposes mentioned in that section, and makes provision for the sale and disposition of said lands.

The tenth section reads thus:

"Sec. 10. The St. Paul & Pacific Railroad Company, or any company or corporation taking the benefits of this act, shall not in any manner, directly or indirectly, acquire or become seized of any right, title, interest, claim or demand in or to any piece or parcel of land lying and being within the granted or indemnity limits of said branch lines of road, to which legal and full title has not been perfected in said St. Paul & Pacific Railroad Company, or their successors or assigns, upon which any person or persons have in good faith settled and made or acquired valuable improvements thereon, on or before the passage of this act, or upon any of said lands upon which has been filed any *valid pre-emption or homestead filing or entry*, not to exceed one hundred and sixty (160) acres to any one actual settler; and the Governor of this state shall deed and relinquish to the United States all pieces or parcels of said lands so settled upon by any and all actual settlers as aforesaid, to the end that all such actual settlers may acquire title to the lands upon which they actually reside from the United States, as homesteads or otherwise, and *upon the acceptance of the provisions of this act by said company*, it shall be deemed by the Governor of this state as a relinquishment by said company of all such lands so occupied by such actual settlers; and in deeding to the United States such lands, the Governor shall receive as *prima facie* evidence of actual settlement on said lands, the testimony and evidence or copies thereof, heretofore, or which may be hereafter taken in cases before the local United States land offices, *and decided in favor of such settlers.*"

"The St. Paul & Pacific Company by vote, resolution or otherwise, never accepted or assented to the provisions of the act of the legislature of Minnesota, of March 1, 1877, and particularly to section 10 thereof, unless the fact that the company built the remainder of its road after the passage of the act of the legislature of March 9, 1878, hereinafter referred to, amounted to an acceptance thereof or assent thereto." O. Rec., 71.

After the completion of the road and on the 24th of July, 1880, the Governor of the state of Minnesota executed to the United States a deed or relinquishment of the lands in question with certain other lands within the limits of said grant, and he claimed the right to execute it under section 10 of the act of the legislature, March 1, 1877, bereinbefore referred to, and the deed so recites; which deed was recorded. O. Rec., 74.

The act of the legislature of the state of Minnesota, March 9, 1878, chapter 71, is entitled "An act to amend said chapter 201 of the Laws of 1877." The first section fixes different and extended periods of time for building different portions of the road from St. Cloud to St. Vincent other than the times specified in the act of 1877. "Provided, however, that such extensions of time are made *subject to all the provisions of this and of the succeeding sections of this act.*" It then provides, among other things, that in case of failure to complete any of said portions of road within the times thus limited, as to the portions of said line remaining uncompleted, that the land grant, rights, franchises, etc., shall be forfeited to the state without any act or ceremony whatsoever, and that it should be the duty of the Governor to take possession thereof, and the same were to be held, used and regranted for the construction of said line; and that any other railroad company might succeed thereto, for that purpose upon the conditions specified in these sections.

The seventh section of the act of March 1, 1877, is amended by striking out all that portion of section 7 after the word "company," in the nineteenth line thereof — being that portion immediately after the words, "The St. Paul & Pacific Railroad Company," in the second paragraph of said section 7 — and inserting in lieu thereof the following:

"But neither the Saint Paul & Pacific Railroad Company nor any other company accepting or acting under the provisions of this act shall be entitled to receive or demand any of the lands granted by the United States to the state of Minnesota to aid in the construction of said line of railroad until that portion of said line of railroad extending from Melrose to Alexandria is fully completed, with cars running thereon; but when such portion is so completed, then, and not before, the Governor of the state may convey or certify to the company building such portion not to exceed two hundred thousand (200,000) acres of said lands, and a further quantity of two hundred thousand (200,000) acres in case the portion of said line of railroad extending from Crookston to St. Vincent is also completed, from the lands accruing to said road north of Crookston, and not within the indemnity limits; provided, nothing shall be construed under this act which will waive the right of the state *to receive the full grant of ten (10) sections per mile of completed road from the United States.* And when that portion of said line of railroad extending from Alexandria by way of Evansville to Fergus Falls is fully completed, with the cars running thereon, then, and not before, *the Governor of the state may convey or certify to such company all the rest, residue and remainder of the lands granted by the United States to the state of Minnesota to aid in the construction of said line of railroad. The Governor of the state is hereby expressly prohibited from conveying or certifying to such railroad company any of said lands otherwise, at other times, in other quantities or upon other conditions than in this section provided.*" Special Laws Minn., 1878, page 344.

The several provisions of the grant of March 3, 1857, and of the act of March, 3 1865, increasing it, which forbade the disposition of the lands in question, for any other than railroad purposes, either by the state, which was a

naked trustee, through any independent action of its own, or in connection with the land officers of the United States, are as follows, namely:

The act of March 3, 1857, section 1, provides:

"That the lands hereby granted for and on account of said roads and branches, severally, shall be exclusively applied in the construction of that road for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses; and the same shall be applied to no other purpose whatsoever."

Section 3 provides:

"That the said lands hereby granted to said territory or future state shall be subject to the future disposal of the legislature thereof for the purposes herein expressed, and no other; and the said railroads and branches shall be and remain public highways for the use of the government of the United States free from toll or other charge upon the transportation of any property or troops of the United States."

Section 4 provides:

"That the land hereby granted said territory or future state shall be disposed of by said territory or future state only in the manner following, that is to say," etc., specifying the conditions in regard to selling or patenting the same.

Section 5 provides:

"That the United States mail shall be transported over said roads and branches under the direction of the Post-office Department at such prices as Congress may by law direct, provided that until such price is fixed by law, the Postmaster-General shall have the power to determine the same."

The act of March 3, 1865, section 5, provides:

"That the lands hereby granted shall be subject to the disposal of the legislature of the state of Minnesota for the purposes aforesaid, and no other, and the said railroads and branches shall be and remain public highways for the use of the government of the United States, free of all toll or other charges upon the transportation of any property or troops of the United States."

Section 6 provides:

"That the lands hereby and heretofore granted to said

territory or state of Minnesota shall be disposed of by said state for the purposes aforesaid only, and in manner following, namely:" (Providing how and when the same shall be conveyed to the company) . . . "That the said lands granted by this or prior acts shall not in any manner be disposed of, except as the same are patented under the provisions of this act."

Section 8 provides:

"That the United States mail shall be transported on said road under the direction of the Postoffice Department at such price as Congress may by law provide; provided, that until such price is fixed by law, the Postmaster-General shall have power to fix the rate of compensation."

The state of Minnesota took the legal title to these lands as trustee of the United States, to carry out the enterprise described in general words in the grants; to enable it the better to discharge its trust. It became a naked trustee with carefully limited powers, but it acquired no proprietary interest in the lands. It seems very plain as a matter of principle, and from adjudged cases, that any act of the state providing for any disposition of the lands, or any part of them, to any other use or purpose than is specified in the acts of Congress is void and "inoperative for any purpose." The acts declare that the lands should "be exclusively applied to the construction of the road in aid of which they were granted, but to no other purpose whatever." The case of *Farnsworth v. Minnesota & Pac. R. R. Co.*, 92 U. S., 65, in relation to this identical grant is conclusive.

Van Wyck v. Knevals, 106 U. S., 365, 369.

The state selected the St. Paul & Pacific Railroad Company as its agent to act in the execution of the trust, and so it stood in a double trust relation: First to the United States, in order that it might realize the benefits and advantages stipulated in the granting acts, whereby the roads when built should "be and remain public highways for the use of the government of the United States, free from toll

or other charge upon the transportation of any property or troops of the United States, and "that the United States mail shall be transported over said roads and branches under the direction of the Postoffice Department, at such price as Congress may by law direct." Act of March 3, 1857, secs. 3 and 5; Act of March 3, 1865, secs. 5 and 8. Second, to sell and apply the land to the use of the railroad company as compensation for building the road.

The state repudiated its trust relations by enacting the tenth section of the act of the legislature of March 1, 1877, chapter 201, hereinbefore quoted, and violated its trust in providing for and executing the deed of relinquishment of these lands to the United States set up in the answers of defendants and under which they claim title. The land officers of the United States had no authority whatever to receive it and act on it or to deal with and dispose of the lands under the general land laws for the sale and disposition of the public lands. These lands, by the definite location of the line of road, had been withdrawn from the operation of these laws, and could become a part of the general public domain only by some legislative act declaring a forfeiture thereof for breach of the condition subsequent in the grant, or by judicial proceedings for that purpose duly instituted by the United States. *Schulenberg v. Harriman*, 21 U. S., 63, 64, and many other cases. No declaration of forfeiture was ever made, and the railroad company having built the road is entitled to the compensation provided for it by the grants and by virtue of the privity existing between it and the United States through its agent and trustee, the state of Minnesota.

The legislation of the state of Iowa, diverting the proceeds of its swamp lands under the act of September 28, 1850, from the primary purpose of the grant, narrowly escaped condemnation on this ground; and it was sustained solely on the ground that the corresponding provision of

the swamp land grant provided "that the proceeds of said lands, whether from sale or direct appropriation in kind, shall be applied exclusively, *as far as necessary*, to the purposes of reclaiming said lands by means of the levees and drains aforesaid.' The court held that the state through its legislature had a *discretion* under the grant, as to the extent such appropriations should be made.

Mills County v. Railroad Cos., 107 U. S., 558, 564, 566.

Emigrant Co. v. Wright County, 97 U. S., 339.

Emigrant Co. v. Adams County, 100 U. S., 61.

But in this case there is no such discretion vested in the state. It has no discretion except in the selection of the company, the common agent of the state and of the United States, to build the road. And, the railroad company claiming under the United States, having built the road is entitled to the prescribed compensation and to complain of the diversion. We therefore say that the tenth section of the act of March 1, 1877, was beyond the power of the state and is void for conflict with the acts of Congress making the grant. The railroad company's rights to the lands had become vested before the act of March 1, 1877, was passed and the company could not be affected by its provisions. The company had earned the lands by completing the road opposite and coterminous with them before the time limited for building the road by acts of Congress had expired, and before the passage of the act of Congress of April 21, 1876, and this act like that of March 1, 1877, cannot have a retroactive operation to take away the vested rights of the company.

Taboreck v. Railroad Co., 2 McCrary, 411.

Starck v. Starrs, 6 Wall., 402, 418.

Barney v. Dolph, 97 U. S., 652, 656.

Atchison, etc., R. R. Co. v. Bobb, 24 Kans., 673.

Elmslie v. Young, 24 Kans., 732.

II. The provisions of the act of the legislature of March 9, 1878, before quoted, still further provided, for the completion of the road *without any such conditions in favor of settlers.* The first section of the act of 1878 extends the time for completion of the road, "subject to all the provisions of this and the succeeding sections of this act." Then follows a provision for forfeiture to the state in case of non-completion. Section 3 provides: "Nothing shall be construed under this act which will waive the right of the state to receive *the full grant of ten sections per mile* of completed road from the United States. And when *that portion of said line* of railroad extending from Alexandria by way of Evansville to Fergus Falls *is fully completed*, with the cars running thereon, *then*, and not before, the Governor of the state may convey or certify to such company *all the rest, residue and remainder of the lands granted by the United States to the state of Minnesota to aid in the construction of said line of railroad;*" that is to say, the line from St. Cloud to St. Vincent, a "portion" of which lay between Alexandria and Fergus Falls.

The words "may certify and convey," as here used, mean "shall" or "must," for the legislature meant "to impose a positive and absolute duty, and not merely to give a discretionary power."

Minor v. Mechanics' Bank, 1 Pet., 46, 64.

Where, by such language as this, power is given to public officers, "whenever the public interest or individual rights call for its exercise, the language used, though permissive in form, is in fact imperative. What they are empowered to do for a third person the law requires to be done. The power is given, not for their benefit, but for his."

Supervisors v. United States, 4 Wall., 435, 446.

The Mayor v. Furze, 3 Hill, 612.

MacDougal v. Patterson, 11 Com. B., 755.

Regina v. Tithe Commissioners, 14 Ad. & El., 459.

These provisions of the act of 1878, and the general purposes of that act, are clearly and necessarily repugnant to section 10 of the act of 1877. The legislature desired and intended to secure the speedy completion of the line of road. The act of 1877, because of the burdensome conditions of section 10, had failed to accomplish that purpose. This the legislature well understood, and it aimed to and did abrogate those conditions, and removed the obstacle they presented. This was done, though not by a direct repeal, yet an act which necessarily operated as a repeal. The act of 1878 — the latter act — "covers the whole subject of the first, and embraces new provisions, plainly showing that it was intended as a substitute for the first," as to this particular subject, and as the two are repugnant, "the latter act operates, to the extent of the repugnancy, as a repeal of the first."

United States v. Tynen, 11 Wall., 88, 92.
Murdock v. City of Memphis, 20 Wall., 590, 616, 617.
Cook Co. Nat. Bank v. United States, 107 U. S., 445, 451.
Pana v. Bowler, 107 U. S., 529, 538.

The power of the officers of the Land Department to dispose of the public lands exists in and is derived from the law. This is their warrant for action. Outside of it they are powerless to affect the rights of any one.

In *Stoddard v. Chambers*, 2 How., 318, it is said that: "No title can be held valid which has been acquired against law. . . . The issue of a patent is a ministerial act which must be performed according to law. . . . It is true a patent possesses the highest validity and cannot be contradicted or explained by parol, but if it has been fraudulently obtained or *issued against law*, it is void. The same doctrine has been asserted by many previous cases

and is maintained by many subsequent ones, holding that the remedy is by suit in equity by the rightful claimant where the patent has been issued to one not entitled to it."

Johnson v. Towsley, 13 Wall., 72.
Smelting Company v. Kemp, 104 U. S., 636.

The defendant James Greenalgh made his alleged purchase of Charles W. Greenalgh before the latter acquired the *legal* title, if it can be said that he ever acquired it at all; that is to say, on July 30, 1882, before the patent issued. He cannot maintain that he is a purchaser for value. His title was simply a claim to an equitable one, and the oldest equity will prevail.

Boone v. Chiles, 10 Pet., 177, 244.
Curts v. Cisna, 7 Biss., 266.

III. The company never assented to the provisions of section 10 of the act of March 1, 1877, and never in any way waived or surrendered its rights. Orig. Rec., 71.

As to the matter of the order of the Secretary of the Interior, of June 18, 1872, vacating the order withdrawing lands along the line of the road (Orig. Rec., 75, 76), and which withdrawal was restored September, 3 1872 (Orig. Rec., 76), it is enough to know that the lands in question are in the primary or granted limits of the grant, and the line of definite location was approved December 20, 1871. Orig. Rec., 74, 75. The title to these lands then vested in the state in trust for the company as of the date of the granting acts.

There is a limit to the power, even of the Secretary of the Interior. When he had exercised his power and exhausted his authority, by reason of which the legal title had passed, it was beyond his authority to disturb that title by any act of his. He was powerless even to recall that which he had done. The only remedy is in the courts. It made no difference whether the settlement of Greenalgh was made

before or after the order vacating the withdrawal. For reasons already stated, the lands had been segregated from the mass of public lands and were not longer subject to settlement and entry, and could only be restored after forfeiture, regularly declared by judicial or legislative act. Until then the secretary could not disturb the title, or restore the lands to settlement and entry. This is the well settled law, we believe, on this subject.

The whole question whether the location ought to have been approved was one of mixed law and fact. If the department decided erroneously, the location might be voidable in a judicial proceeding, but it was not void, and the secretary, having exhausted his power in the premises by approving the location, could not thereafter disturb it. That question was one for the courts in a direct proceeding for that purpose.

Moore v. Robbins, 96 U. S., 530.
United States v. Schurz, 102 U. S., 378.

In this case, as well as in the *Wenzel* case, argued herewith, the act of Congress of June 22, 1874 (18 U. S. St., 203), is relied on by defendants, and also another act of the same date (18 U. S. St., 194). The former act extends the time for completing this road upon certain conditions, and reserves rights to settlers; but it requires that before the company shall acquire any rights under it, a certificate of acceptance shall be made and filed. This was never done, and the company never took the benefit of it, but remained exposed to the power of Congress to enforce forfeiture as for breach of condition subsequent. This has been the construction always put upon this act by the Land Department.

Mjoen v. St. Paul, Minneapolis & Manitoba R'y Co., 9 L. D., 246.
Kemper v. St. Paul & Pacific Railroad Co., 2 Copp's Land Laws, 805.

This act, therefore, has no bearing whatever on the case. The other act merely gave the company the *option* to relinquish granted lands that had been entered by settlers and receive other lands in lieu. The company never exercised this option in respect to these lands, so the latter act has no bearing whatever on the case.

The withdrawal of lands along the line of the road of February 6, 1872, was notified to the local land offices and notice thereof received by them February 15, 1872. Orig. Rec., 71, 95, 98, 88, 89. The entry of Greenalgh therefore did not fall within the first section of the act of Congress of April 21, 1876.

Olney v. Hastings & Dak. R'y Co., 10 L. D., 136.

The right of the company could not be defeated by any settlement or entry after the definite location and withdrawal.

Van Wyck v. Knevals, 106 U. S., 360.

It is submitted that the complainant is entitled to the decree sought by its bill.

S. U. PINNEY,
Counsel for Appellant.

SUPREME COURT

—OF—

THE UNITED STATES.

OCTOBER TERM, 1890.

Nos. 24 and 25.

THE SAINT PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY,

Appellant,

vs.

CHAS. W. GREENHALGH, *et. al.*,

Appellee,

AND

THE SAME,

Appellant,

vs.

CHARLES WENZEL,

Appellee.

BRIEF FOR APPELLEES

S. J. R. McMILLAN,

of Counsel for Appellees.

SUPREME COURT

OF THE UNITED STATES.

OCTOBER TERM, 1890.

Nos. 24 and 25.

THE ST. PAUL, MINNEAPOLIS & MANITOBA RAILWAY COMPANY, Appellant.

vs.

CHARLES W. GREENHALGH, *et. al.*, Appellees

—AND—

THE SAME, Appellant,

vs.

CHAS. WENZEL, Appellee.

These suits are brought by the complainant, as the successor in interest of the St. Paul & Pacific Railroad Company, to recover certain lands claimed to be within a grant made to aid in the construction of what is now known as the St. Vincent Branch Line, completed A. D. 1879.

The grant was from the United States to the Territory and State of Miunesota, and *not* directly to any particular corporation, as was the fact in most of the cases cited for complainant.

The lands were, after the expiration of the time to complete the road, patented to the defendants, respectively, by the United States.

The cases were tried together in the Circuit Court, and following the course adopted by all parties in the Court below in that regard, this brief is made to cover the two cases entitled above with such separate references as the differing facts require.

The argument in each case, therefore, so far as applicable, is to be applied to both cases.

STATEMENT.

The facts as stated in the opinion of the Court below filed upon the decision of the cases on the trial in the Circuit Court, are as follows:

"These cases are so nearly alike that they may be considered together. The complainant claims to be the equitable owner of certain lands, the legal title to which is in defendants, and files these bills to enforce such claim. Both tracts lie along the line of the St. Vincent Extension of complainant's railway and north of the indemnity limits of the Northern Pacific Road. The definite location of this line was made in 1871, and map thereof filed with the Secretary of the Interior and approved December 20, 1871. The Greenhalgh land is within ten miles of this line and the Wenzel tract within six miles. The road was built past the Greenhalgh land in November, 1872, and finished to St. Vincent by November, 1878. After the filing of the map of the definite location, and on February 15, 1872, the Secretary of the Interior withdrew from sale or other disposal the odd-numbered sections within twenty miles. On June 18, 1872, the Secretary directed the vacation of this order of withdrawal, notice of which was received at the local land office on July 5, 1872. This order of vacation was itself revoked on September 4, 1872. On June 26, 1872, Greenhalgh settled on the land in controversy in his case,

subsequently filed and proved up his claim, and received a patent."

"Wenzel settled on his tract June 2, 1874, and filed his claim September 2, 1874. The various acts of Congress upon which complainant's title rest were nearly all quoted in the opinion just filed in the case of the Northern Pacific Company vs. the complainant, and I shall simply refer to them here."

IN THE GREENHALGH CASE.

I.

The conceded legal title to the land described in the bill, is in the defendant James Greenhalgh, the grantee of his co-defendant Charles W. Greenhalgh, who took by patent from the United States.

The complainant asks to be declared the "full, equitable and beneficial owner of said tracts of land," and to receive the legal title thereto, in fee, basing its claim, not upon any equity as between defendant and itself, but because of holding a prior *vested right* in the land.

The land in dispute is near Crookston, and was within Indian territory until May 5, 1864, when by treaty the Indian title was extinguished.

On March 3, 1857, congress granted to the then territory of Minnesota, six sections per mile for a branch line of railroad, to extend from St. Cloud by way of Crow Wing to a point on the Red river, to be fixed by the state. Two months later the legislature named St. Vincent, at the extreme northwesterly boundary of the State, as the terminus.

As to the greater part of the lands affected by this act, the grant thereby made, has been held to be *in præsenti*, following decisions from the time of Marshall, C. J. to this day.

But, by the terms of the act, as to lands in Indian terri-

tory, the grant is not *in præsenti*, and the case is at the very outset, removed beyond the reason and authority of the decisions bearing upon lands, at the date of the act, the absolute property of the United States, and granted thereby. If the road was not completed within ten years, the land undisposed of was to revert to the United States.

The act next in point of time is the joint resolution of congress of July 12, 1862, by which the grant of 1857, to this branch line to St. Vincent, is vacated, and the lands covered thereby restored to the public domain. The point of intersection of the 10th standard parallel with the 4th guide meridian, is mentioned therein as upon the line of this grant.

It has been held of such a grant that lands which did not pass at the *date* of a *grant* would not by the removal of the impediment because of which they did not pass, become subject thereto.

Newhall v. Sanger, 92 U. S., 761.
Kan. P. R. R. v. Dunmeyer, 113 U. S. 629.

So here, when the Indian title was removed, so that by sec. 6 of the act of 1857, title might be made to the six sections, *in place*, thereby granted, the joint resolution of 1862 had relegated all lands upon this branch line so situated, to the public domain, "disencumbered of all claims by reason of such grant," and left such lands thereafter to "be dealt with as other public lands of the United States."

It therefore appears that, within Indian territory, no grant, beyond the right of way, *ever attached* to this branch line, under the act of 1857.

The act of March 3, 1865, the next in order of time calling for construction, becomes, upon several grounds, the foundation of complainant's supposed title. First, because the tracts of land named in the bill are outside of the six-mile limit covered by the act of 1857, and so depend upon the act of 1865 only; and, second, because this latter act is alone relied upon as reinstating the six section a mile grant, named in the act of 1857, lost by the joint resolution of 1862.

Has the act of 1865 the effect thus claimed for it?

The act of 1865 is made in terms, by section 9, to apply to the branch line vacated by the joint resolution of 1862.

But has the act itself greater force than to operate as a grant of four sections to the mile *in quantity* to such restored line. Is there anything in the act, which in itself, works a grant of the six sections *in place* covered by the orignal act of 1857?

It is conceded that the act of 1857 was a grant *in præsenti*, so far as it took effect at its date, but as to lands here in dispute, it was not a grant *in præsenti*, as above shown, *and it never attached to any land on this branch line within Indian territory*.

Section 9, of the act of 1865, provides, "that the provisions of this act shall also be construed so as to apply and extend to the portion of the line authorized to be vacated by the joint resolution approved July 2, 1862." Section 9 only refers to the *provisons of the act of 1865*, and in no way to the act of 1857. The lands here in dispute, being at this date a part of the public domain, were subject *then* to *grant* or *occupancy* for a line of railroad, and this section 9 is given its full force, when held to reinstate this line of road, and everything ever held by it in *grant or right of way* under the act of 1857, and a present grant of four sections to the mile, which, *within* the *old Indian territory*, would be the only *grant* attaching to that part of the line, save *the right of way*, which was granted *in præsenti* by the act of 1857, *within* as well as out of Indian territory. This did not operate as a re-grant of the six sections per mile granted in the act of 1857.

And so it appears by this act that land was to be certified "*not exceeding* ten sections to the mile."

The Supreme Court says of this act: "The only lands granted by the act of 1865 are the four sections for each mile additional to the original six."

Winona R. R. Co. v. Barney, 113 U. S. 618, 628.

And again in the same case:

"The grant by the act of 1857 is one of description, that is, land in place and not of quantity * * * of particular parcels of land."

And again, in speaking of the lands granted by the act of 1865, and interpreting the word quantity used in the first section the Court adds: "It is the same as though the act had used the words 'six sections' instead of the word quantity. The four sections are to be selected by the secretary of the interior * * * and as to them the grant may be regarded as one of quantity."

The principle of construction applicable to grants of this nature is that they are to be "strictly construed against the grantee, and that nothing passes but what is conveyed in clear and explicit language. If these terms admit of different meanings, one of extension and the other of limitation, they must be accepted in the sense favorable to the grantor."

Leavenworth R. R. v. U. S., 92 U. S. 733.

"Donations of the public domain for any purpose are never to be presumed. Those who claim against the government under legislative grants must show a clear title."

Rice v. S. C. & St. P. R. R., 110 U. S. 695.

The learned counsel for the appellant in his brief herein refers to the case of *Nash v. Sullivan, 29 Minn. 206.* The interpretation of these statutes there made was *in aid* of a patent title, against a mere trespasser not as here, in a suit to undo such title. And this fact is stated by the Court as one of the reasons for its decision.

Since the above decision in 113 U. S., this Court will not follow the Minnesota Court in holding that the act of 1865 "amounts to an affirmative grant of ten sections per mile." This is the most *extensive* interpretation possible, and not to be given when offered to defeat an adverse legal title held *under a government patent.*

"Nothing passes but what is granted in clear and explicit terms."

Rice v. R. R. Co., 1 Black 358.

Again, the learned counsel for complainant claimed in the Court below that it is immaterial whether the grant given by the act of 1857 applies to this line or not, because the land is "within the limits of the grant of March 3, 1865."

We reply; that grant had no limits, save that of twenty miles from the line. It was of quantity, not in place. And if the prior grant had not attached to this line the four sections per mile granted by the act of 1865 would not be found extending from six to ten miles from the located line, but would be looked for more naturally within four miles of the line unless elsewhere selected.

By this act, also, the time to complete the road is extended to March 3, 1873.

It is not claimed that any acts, save those above mentioned (unless such claim is made for the act of March 3, 1871, 16 U. S. Stat. 588) operate as grants, affecting said lands; the other acts, both of the State and the United States, and the further provisions of said acts, are cited, as bearing upon the question of the *vesting*, or not, of the interest claimed to be *granted*, by the acts of 1857 and 1865.

It may properly be said, at this place, that when the matter of the "*vesting of title*" in complainant is mentioned herein, it is at all times intended, as a title subject to be *divested for breach of condition subsequent*.

It is plain that nothing can be found in the act of March 3, 1871, *supra*, which operates, *by way of grant*, upon any land situated as is that covered by this bill. This is properly ruled in the case of *Nash v. Sullivan, 29 Minn. 213*.

In the Court below it was claimed by complainant that "it is immaterial to these cases whether the act of March 3, 1871, ever became operative or not.

Is this position correct?

So far as the matter of a grant of lands is concerned between St. Vincent and a point "at or near Otter Tail or Rush Lake," this is undoubtedly true. No acts, save of 1857 and 1865, can be looked to, as granting lands between such points.

But we make the further point that *no grant* of lands to the St. Vincent branch was ever made, save by way of St. Cloud *and Crow Wing*.

Upon, this point, as well as others vital to complainant's case, (as upon the question of a *legal location* of the 1871 line) this act of 1871 is of the first importance.

We claim that this act of March 3, 1871, never became a law, *or operative* for any purpose, *so as to affect the rights of these defendants*, either by original force, or by ratification or otherwise.

How far it may be considered as in *Nash v. Sullivan*, as one of the acts or facts going to sustain *a patent title* as *against one* having *no title*, when taken with other acts looking uninterruptedly to the making of such title, it is not material in *this case* to say.

The questions are: Did this act *change* the line from Crow Wing so that the *grant followed it*, and did title in any lands be-

come *vested* in the company by reason of the *location* of a line *under it;* and further, if this is not true of the act itself, has any later act made any or all of these things so? It will be considered hereafter, whether under the series of acts applicable, title was under any circumstances to vest, upon *location* of *any line*, or whether lands were not after location by acts passed before any rights attached, subject to disposal by the United States prior to patenting to the state?

Did this act ever take effect?

It is to be noted at the outset, that this is the first act by which congress legislates directly for any particular railroad company claiming under the grants of 1857 and 1865.

Theretofore, all grants had been to the State, and State legislation was required to fix lines, and allow any particular company to gain lands, and to attach conditions as to time of construction, &c. This was necessarily so upon the theory of these grants. The grant was to the State; the State was to build the roads, or have them built, and might lose the grant by default of a particular company, and gain it through the instrumentality of another.

Thus the right of the State to grant, forfeit and re-grant.

Western R. R. Co. vs. DeGraff, 27 Minn. 1.

The State *grant* is a "*bounty*" as well as that of the United States.

I b, 27 Minn. 1.

Now this act of 1871, expresses no intent to change this course of action, but on the contrary is only to *take effect* upon condition of being in accord with *State legislation*, as well as upon other contingencies therein made conditions precedent by congress itself.

The foundation theory of the act, is, that, if by reason of State legislation, this railroad company, then had the inchoate right to the *two grants*, one northwesterly to St. Vincent, and the other northeasterly to Lake Superior, and it was in accord with such legislation that the first line should not pass through Crow Wing, but go from St. Cloud to Otter Tail or Rush Lake, in lieu of the old line, and that the grant to Superior should be surrendered entirely and "*restored to market*" by the *release of this company*, that then, this change, not enlarging the grant,

"in any manner" should take effect, and the line to St. Vincent, go as suggested therein.

It is clear, that *the act*, covers more than the *change* of this branch line; and it is the "*act*" which "*shall only take effect upon condition of being in accord with the legislation of the State of Minnesota*," and not the *change* in *this line only*.

The United States did not by this act, consent (had never before and has not since consented,) to a change in this branch line, so as to carry the *grant* to a line going elsewhere than through Crow Wing; and the *subject matter* of such change of line, standing alone, and disconnected with *each and all* of the conditions and limitations named in *this act*, was not in this act, *or any other*, considered or legislated upon by congress, in any way, so as to make any *grant* whatever, either *old* or *new*, applicable to such changed line, at any point, either north or south of Otter Tail and Rush Lakes.

Let us consider the legislation of Minnesota, bearing upon the subject matter of this act of 1871.

It is admitted there was legislation, looking to a new line to the Red River, but none that made such line a substitute for the Crow Wing line or which attempted to carry any *grant* to the new line. It will not be claimed that there ever was a State act, looking to the *surrender* of the Superior line or grant.

The act of February 6, 1864, provided that the line need not go by way of Crow Wing, or St. Cloud either, for that matter. But this act has no relevancy because of the subsequent vacation of the entire line, see act of March 4, 1864, and acceptance by the company May 28, 1864, by which act also the right is granted to this company to build the Lake Superior branch.

The act of March 2, 1865, conferred anew on this company the right to build a road to St. Vincent, from St. Cloud, in a "northerly" direction; no road was built under this act, nor does it change the direction from the original course through Crow Wing and past a point at or near the intersection of the standard parallel and guide meridian, named in the joint resolution of 1862.

The act of March 6, 1869, provides for the location of *a line* from St. Cloud via. Sauk Centre, to a point on the Red River to be designated by the company.

This was a lawful thing *in itself*, for the State to do, and it

does not attempt thereby to attach *this grant* or any grant to this line, or to say that it is a *substitute* for the line to which the grant had theretofore attached. And plainly the company did not so regard it, but thereafter located a line by way of Crow Wing and Rush Lake to St. Vincent. See line of 1869 and 1870.

The act of March 3, 1870, is to the same effect, except that this new line is to keep on westward to Osakis.

These are the only acts bearing upon any other line to the Red River, save the one carrying the grant, and none of these lines are named as in *lieu of the Crow Wing line*, nor is any grant attempted to be made with or for them.

So far, the Crow Wing & St. Vincent Line is intact; no intension is yet shown by the State to vacate any part of the grant thereto, or to substitute any other line therefor.

By the acts of March 2, 1867, and March 7, 1870, the right in this company to locate and construct the Superior branch, is forfeited and lost to it, and granted to another company. No State legislation is found consenting to the surrender of this Superior Branch by the St. P. & P. Railroad, or otherwise, or the building of the line mentioned in the U. S. act of 1871, in lieu of such Superior line *and* the Crow Wing line, or of either of them. This forfeiture was valid.

Farnsworth v. Minn. P. R. R., 92 U. S. 66.

By State legislation this Superior line was not on March 3, 1871, one of the branch lines of this company; yet the act of congress of that date proceeds upon the theory that it is, to the same extent as the Crow Wing Branch, and so the act provides that this company may alter "its branch lines" (naming these two), and construct in *lieu thereof* the line from St. Cloud to St. Vincent upon condition (among others) that said company shall make "proper releases" of the land grants attached to each of such lines, and that such lands shall be "restored to market without further legislation."

In no respect whatever, then, was the act of March 3, 1871, in accord with the legislation of the state, but in its entire scope and purpose discordant therewith.

It is claimed that as the State was a mere *naked trustee*, that the United States could provide for a forfeiture of the Lake Superior grant by the release of *this company*, though it then had no interest therein.

It is sufficient to say, in answer to this, that the United States did not attempt to do this, *or any act contrary to State legislation*, but the act was only to *take effect* if in *accord* with such legislation.

So that neither by the *will and direction of congress*, or of the State, was the Superior grant forfeited, or the act of 1871, *operative for any purpose whatever.*

In 1871 a line of road was laid out on the ground, running from St. Cloud to St. Vincent, some twenty miles south of Otter Tail and Rush Lakes, without passing through Crow Wing, or within 80 miles of the intersection of 10th standard parallel with the 4th guide meridian, and in November, 1871, a map of the definite location of such road was filed.

As above shown, there being no law attaching *a grant* to such a line, the Secretary of the Interior was justified in his action of the 18th of June, 1872, vacating the former withdrawal of lands within twenty miles of such line made upon such filing. Such withdrawal was wholly void.

The title of the United States can only be affected by a location "made according to law." "Courts can only adjudge what has been granted * * * but where land is expressly granted in one place, they have no power by a decree to grant an equivalent in another place * * * * the Courts of the United States have no authority to divest the title of the United States in public lands, and vest it in claimants, however just the claim may be to an equivalent."

U. S. v. Forbes, 15 Peters 173.

Not only did no *title* pass from the United States to the company in any lands by reason of the location of such line, but the United States *had no connection whatever therewith* and any action of the land officers in restraint of settlement because of such location would be wholly illegal, void and without color of right.

The pre-emption entry of Greenhalgh, therefore, upon this land, in June, 1872, was lawful, and full title could be made thereon under the general laws, and without reference to the peculiar protective features of the acts making the grants under which the company claims, or the special acts hereinafter mentioned.

Taking up again the consideration of acts bearing upon the

question, we refer to the next succeeding act of congress, that of March 3, 1873.

It is claimed for complainant that congress here recognized the 1871 location. The act certainly refers to some existing location, but *makes no grant*, and carefully avoids conferring *any right*, but refers back upon its face to prior acts "relating thereto." From such acts, if any, all "benefits" are to come.

This act does not purport to waive any condition theretofore attached *to any act* save that of *time* of completion only.

It does not give life to the act of 1871, or in any manner enlarge a grant, which Congress there said should not be enlarged.

Now, whatever bearing this act may have, as one of the series going to sustain the action of the land officers in finally patenting to the State, and of the State in deeding to the railroad company lands on this line, and as evidencing consent of all departments of both governments that title should so vest in the company, it is submitted that it has no weight, in making out in complainant a *controlling equity* to *undo a legal title*, held also under a United States patent, and with the express consent of the State.

This act of 1873 was passed *after* the defendant's rights *had attached to this disputed land.*

It was not obeyed, the road was not completed within 9 months, and by the terms of the act, it was only "if completed within said nine months," that it was to receive the "benefits" given by other acts, *if any such were given*, otherwise, *this* act *gave none.*

For complainant the case of *Salem v. E. R. R., 98 Mass. 431,-442*, was cited in the Court below, as an authority for the position, that this act of 1873 forms a part of the original grant of power, in fixing the *location* of the road. Of the act there construed, the court holds, that, "Its apparant purpose is to remedy some deficiency in the authority originally conferred upon the corporation, or to confirm some real or supposed departure therefrom."

As above shown, the "apparent purpose" of this act is simply to *extend the time* for the completion of the road, leaving all *benefits* to be received, *if any*, to come from prior acts.

The next act is that of March 11, 1873, of the State. This act recites that of March 3, 1871, of congress, and extends the

time for completion of the road, to January 1, 1874. It further declares, that the company "so completing said line," shall have "the grant of lands in said act of congress made and provided."

As before shown, the act of 1871 never took effect as a law. No *change of line, or grant*, was made by it, not alone because it did not accord with State legislation, but because the Superior grant was not annulled by virtue of it.

This State act of 1873, also directed, that the line should go by Fergus Falls and Glyndon, thus making it impossible for the road to intersect the line of original grant either at or near Otter Tail or Rush Lakes, and we accordingly find the line some twenty miles south and west of such point.

It is clear that this act is not effective in transferring to this line the old Crow Wing grant.

The above are all the acts of either the State or United States which affect this land, save acts which contain provisions concerning lieu lands, to be given for those disposed of, prior to the vesting of title in the company; or acts, in terms protecting third parties in their lands within the limits of the grant, which have the effect of office found in relieving from the grant lands lost for failure to comply with conditions subsequent therein.

* * * * * *

This naturally leads to the consideration of the right of Congress and the State to affect tracts within the grant, by subsequent legislation.

II.

Conceding for the time being, and for the argument, that the line was changed to the St. Cloud and Glyndon route, and that the grant of 1865 attached thereto, and that a *legal* location of such line was made in 1871, what effect would such facts have in making title in complainant, when would title attach, and how might an inchoate right be lost?

Three cases in the Supreme Court illustrate the principle. *Lytle v. Arkansas, 9 How. 333*, where *an entry* is said to be "no shadowy right." *Yosemite Valley case, 15 Wall. 91*, explaining the above, and holding that the government may grant to another

in spite of all *inchoate* rights. And lastly, the *Hot Springs case, 92 U. S. 715, 716*, where mandamus is held a proper remedy to compel officers to perform acts clearly required by law and necessary to vest title.

As to lands *in place*, such sections may be "*ascertained and identified by a legal location* of the line of the road."

St. Paul R. R. v. Winona R. R., 112 U. S. 720, 731.

Thus land granted to *the State* may be known.

As to the effect of even a *legal* location of the line, upon the *vesting* of title, we must look to *all acts* passed prior to such time.

First, by act of 1857 lands in place and granted *in præsenti* would become known when the lines were "definitely fixed." Then the title would *vest in the State*.

By the act of 1865, lands could be disposed of by the State, *so that any company* could get a *vested right*, only upon the certificate of the governor of completed road, "in good, substantial and workmanlike manner." And lands could only be disposed of by the State, after *patent* to it, on such certificate.

Until such time, therefore, the State was the trustee of the United States, and such governments might make title in another than the railroad company, although it had *certain inchoate rights*.

Tucker v. Ferguson, 22 Wall. 572.

Prior to *construction*, certificate and patent to the State, no *title* passed from the State to the railroad company.

Farnsworth v. M. & P. R. R., 92 U. S. 49.

Again by the act of July 13, 1866, *14 Stat. U.S. 97, Sec. 1.* congress in terms provides for the disposal to others of lands within the grant, after the definite location of the line, and for the giving of other lands in lieu thereof.

All of these acts were passed prior to *any right* of this company attaching, and, taken together, give the principle applicable to this case.

It is plain that it was not intended since 1865 that title should *vest*, even in the State, so as to be beyond disposal by the government, upon filing of the map of definite location, as held in cases giving construction to other acts and charters, cited for

appellant, where grants are made directly to a particular company.

Not only is the remedy provided in section 1, act of 1866, giving lieu lands for those lost *after* definite location, and also in act of June 22, 1874—*18 U. S. Stat. 203, sec. 1*—hereafter cited, *exclusive*, and a complete bar to any recovery *in equity* of the specific *lands lost*, but, *prior to the patenting* of lands to the State, no disposition thereof by the State could *vest title* in the *company*, but the *inchoate title* then held, the United States could still grant to another.

Yosemite Valley Case, 15 Wall 77.

It is also important to consider the right or interest of the state, or any particular railroad company, to any given tract of land within the bounds of the grant, and after *legal* location of the line and withdrawal duly filed, as affected by the question of *time*, and failure to comply with the various acts in that regard, and the right of congress thereafter to attach conditions in giving further time to complete the road.

Can it be doubted that congress was, by those acts, legislating for *completed* roads, between the points named? Or that upon failure to complete the *entire road*, within the prescribed time, conditions could be imposed, affecting not only lands within the granted limits of the located lines, but the constructed line not then patented?

Nothing is more evident that that congress has legislated upon the subject, with the fullest *intention* of protecting outside parties situated as are these defendants, both by general and special legislation.

We refer first, to the general law of 22 June, 1874, *Chap. 400, Suppl. Rev. Stat. U. S. p. 86.*

This act makes full *equitable provision* for lieu lands upon adjustment of any railroad grant, where pre-emptions have been allowed within the limits of any grant, and by the last proviso therein sustains the position of the above act of 1866, in holding lands open for settlement after location and before withdrawal.

Again we cite the act of June 22, 1874, *18 U. S. Stat. p. 203*, extending the time of the St. P. & P. railroad company to complete this line. A saving clause is here inserted, fully

protecting settlers, and giving the company until March 3, 1876, "and no longer," to complete its line.

Whether the company formally accepted this act or not is wholly immaterial; it remained *in the way* of a *later completion* of the road, by which to make a *legal title*, or "controling *equity* in complainant."

After the time so limited, to-wit, on April 21, 1876, congress passed "An act to confirm pre-emption and homestead entries of public lands within the limits of railroad grants, in cases where such entries have been made under the regulations of the land department."

Certainly these entries have been made under such regulations!

The learned counsel for appellant, on page 25 of his brief herein, and on page 10 of his brief in the Wenzel case in terms concedes that the company, by reason of its repeated defaults in construction of this line, and prior to April, 1876, "still remained at the mercy of the United States, so that the government might enter or declare a forfeiture for breach of condition." He immediately adds, "*But it has not seen fit to do so.*"

Is this view of the situation correct, upon any principle ofconstruction, or of the facts as they exist?

In *Schulenberg vs. Harriman, 21 Wall. 44*, the court of last resort has said, "A legislative grant operates as a law as well as a transfer of property, and has such force as the intent of the legislature requires."

By the original act of 1857, as in the grant construed in the foregoing case, it was provided in terms, "*that if any of said roads or branches is not completed within ten years, no further sale shall be made, and the lands unsold shall revert to the United States.*" No sale had been made of the lands covered by these bills and such time and all extensions given had expired.

A similar clause is found in sec. 6 of the act of 1865, as to the sections there granted. Under that act, lands were "not in any manner to be disposed of, by the State, except as the same *are patented* under the provisions of this act; and should *the State* fail to complete * * * then the said lands *undisposed of* * * * shall revert to the United States."

None of these lands had been certified and disposed of under this section, so they were subject to reversion.

Here was a *condition subsequent*, and one entirely applicable to these lands. They had never been patented to the State, they had not been disposed of, the time to complete the road had expired, the lands had, *under the law, reverted to the United States*. And in addition, there remained the positive command of the original grant, "no further sale shall be made."

As the learned counsel puts it, "the company still remained at the mercy of the United States."

We concede that a stranger cannot take advantage of the non-performance of a condition subsequent annexed to an *estate in fee*.

We have hereinabove argued, that complainant had *no such estate* at any time, in these lands, but waiving that point for the time being, was there no act "the equivalent of an inquest of office at common law," upon the part of the government, and as applicable to the special tracts within the grant, situated as are these lands?

In *Schulenberg v. Harriman, ib*, the Court says of this matter:

"In what manner the reserved right of the grantor for breach of the condition must be asserted so as to restore the estate, depends upon the character of the grant.

If the grant be a public one, it must be asserted by judicial proceedings * * or there must be some legislative assertion of ownership of the property for breach of the condition, such as an act directing the possession and appropriation of the property, or that it will be offered for sale or settlement. * * the mode of asserting or of resuming the forfeited grant is subject to the legislative authority of the government."

St. L. Ry. v. McGee, 6 S. C. R. (Mo.) 125, 126.

Can it be questioned, but that in and by the series of acts above stated, the ample equivalent to "office found," exists and operates with equal force *upon these disputed lands*?

It was not necessary that the *entire grant* be forfeited, the complainant will not object that in effect this is so legislated in special cases only.

As to the Greenhalgh land, section 1 of the act of 1876 is directly applicable. By the title of the act it appears that its

object is to "confirm entries which have been made under the regulations of the land department."

Complainant claims these lands because of the location of the line in 1871, and by reason of their selection in 1880. (Page 18 brief.)

As we have endeavored to show there was no valid location and no valid withdrawal of these lands.

It certainly appears that *there was a restoration* to market by the land office. Whether this restoration was valid or not is not a question of importance in the construction of this act of 1876.

The lands had reverted to the government, and what acts, whether formal or informal, past or to be done, should be made by law sufficient to secure the patent, directed by the section to issue, was of no moment to complainant. The land was *then* entirely subject to government *possession* or *grant*. A former void act of a government officer, so far as complainant can be heard to object, might then be made *a fact* upon which a valid title in another should rest.

The general effect of this act as enforcing the forfeiture and giving effect to the reversion provided for in the original grants, will be more fully considered in the portion of the brief headed as in the Wenzel case, and given full application at this point.

The *selection* by the company of this land in 1880, is not pleaded in the bill herein as a ground for relief, and upon the merits, if properly a question in the case, could have no effect upon the title of defendant, theretofore perfected.

III.

So far, we have considered in greatest degree, acts of Congress relative to the matter here in issue, but it remains to present also the later State statutes, under which this branch line was finally completed.

Subsequent to all national legislation upon the subject, and to all the acts above cited, an act was passed entitled "An Act to

provide for the completion of the lines of railroad commonly known as the St. Paul and Pacific extension lines." Approved March 1, 1877.

Spl. Laws of Minn. 1877, ch. 201, p. 257.

The tenth section of this act, in express terms, protects settlers in their title to lands, held as those in this case, and declares that the railroad company "shall not in any manner, directly or indirectly, acquire or become seized of any right, title, interest, claim or demand, in or to any" such piece or parcel of land.

It is conceived that important questions may arise, as to when and how the State may attach conditions and as to the extent to which such conditions may go in the direction of relieving any particular tract within the grant from the conveying power of it. But when the State legislation in that regard is in full accord with and in aid of that of the United States looking to the same result, *which legislation is induced by repeated defaults of the company*, can there be any doubt of its effectiveness?

What relation does the State bear to the grant, and by what act, or series of acts, has the railroad company succeeded to that relationship?

For appellant, it is argued, that the State, upon designation of the company to build the line named in the act of original grant, is thereafter a "naked trustee" for such company, with no further power or discretion, and that upon the vesting of title in the *State*, the company at the same instant becomes seized to the same extent, and of an estate, thereafter beyond control of either the State or the United States, except upon breach of condition subsequent.

For defendants, we contend; first, that this position is not true of these grants; and second, that if sound, still the State as well as the United States may forfeit for breach of condition subsequent, and impose new conditions, even to the extent of partial loss of lands, for new rights given.

We contend that the State is, until, both under the original grant and the State act transferring the same, title is vested in the railroad company, simply the trustee of the *United States*.

"When the State * * in execution of the trust, had transferred her *entire* title to the company, and they had per-

fected their title and acquired the right to sell," then her trusteeship ends.

Tucker v. Ferguson, 22 Wall. 572.

Of course, to the extent of the conditions in the grant, the State is bound, "and anything in conflict with them would be *ultra vires.*" So after the expiration of the grant, although as to the State, it might be necessary to work forfeiture by office found or equivalent act, yet under the law no further sale could be made.

Ib., 22 Wall. 572.

But "Congress alone has power to enforce conditions of the grant" to the State, otherwise the enforcement of a condition limiting the power of the State in disposal of such lands, rests upon the "good faith of the State."

Mills v. R. R. Co., 107 U. S. 557, 565.
Approved in Hagar v. Rec. Dist., 111 U. S. 701, 703.
Emigrant Co. v. County of Adams, 100 U. S. 61.

Again, the State may impose conditions, *other* than those named by congress, for the vesting of title in the railroad company, and may allow pre-emption within the grant.

Of such a law the Supreme Court says: "It was a wise provision which the legislature of Missouri, in the exercise of an enligtened liberality has conferred."

Baker v. Gee, 1 Wall. 333.

The grant was to the State, and made "subject to the disposal of the territory and State." This is in substance; to provide that title is to vest and conveyance to be made, at such time, and upon such terms and provisions, as the territory and State had fixed, or might fix, in the proper and lawful exercise of the right of disposal.

De Graff v. St. P. & P. R. R., 26 Minn. 144, 151.

The State grant is a "bounty," to which conditions may be attached at the "sole discretion of its legislature."

Western R. R. Co. v. De Graff, 27 Minn. 1.

"The law did not assume to force the grant upon any company," but if a company undertook to build the road under a given State act, which in terms declared that it should have no interest in certain named tracts of land, (otherwise covered by

the grant) the company could not receive a patent for such lands, *directly*, from the United States, *on the ground*, that such State act was void as contrary to the conditions of the granting act.

No law provides for a patent to the company, upon any contingency, and the United States *alone* can "enforce the conditions of the grant."

Rogers v. P. H. & L. M. R., 45 Mich. 460.

Again, the grant is to the State, to aid in the construction of the road, by a *sale of the lands*, though without doubt, "a direct appropriation of kind" as a grant by the State of the lands to a constructing company will be upheld; still there is no foundation in the act, for the claim, that the State *must* make a "direct appropriation in kind" of these lands *and all of them*, to the company, so that such company must eventually take *legal title in fee* thereto.

Under the grant, not one acre *of land* need of necessity go to any company.

The constructing company may have an "*equity*" to the *proceeds* of the lands, but under *no circumstances* to *any tract*, the title to which is otherwise aliened by the State.

Ib., 100 U. S. 67.

Again, the grant is to the State, to aid in the *construction of the road.*

For all that appears, sufficient lands, *or proceeds* of lands, may have been already, heretofore, deeded and given by the State to the company to *fully construct the road.*

No "equity," and no right is shown to any further land, or the proceeds of land sold, or, that if there be such equity or right, it may not be fully satisfied out of lands still applicable thereto and held for that purpose, and in which third parties have acquired no interest.

Cedar R. & M. R. v. Jewell, 61 Iowa 410, affirmed by Sup. Ct. U. S.

There is nothing in the grant making it certain that the company is ever to have a landed estate, in the real property covered thereby, or any part of it.

Yet the bill, and argument for complaint, are based upon the theory, that the *title* to *all* the granted lands *vests* in the *company* upon *vesting* in the *State*, regardless and in spite of State legislation to the contrary.

Now, under this grant, the State could not "in any manner dispose" of these lands "except as the same are patented" to her; Sec. 6, act of 1865. Prior to such patent, then, no title could *vest* in any particular company, and until then the State was the trustee of the United States, and at any time prior thereto, the two governments could divest any inchoate right the company might have in any particular tract within the grant.

The interposition of the State as a grantee, removes many degrees, the vesting of title in the company building the road, and leaves the lands open to many contingencies of loss not applicable to the case of a grant *directly* to a particular company.

The State could not, in *violation* of the conditions of the acts of congress, or any of them, pass any title, legal or equitable, to the company, in any lands pertaining to the grant, and it has not attempted to do so, nor does the bill so charge. Neither could the State, nor has it, nor is it so charged, given any title or claim in equity, to the complaint, to lands excepted from the grant, or for which lieu lands are therein provided, or as to which after default in condition subsequent, congress had allowed other rights to attach.

The State also, having power to forfeit, as to any particular company, the *entire* grant to it, for non-completion of the line within the time named, may, with equal propriety forfeit *named tracts* out of the grant, and allow others to acquire title thereto, and the company thereafter completing the road with full notice of such forfeiture, cannot complain.

As to these lands, therefore, which are of the classes above named, the complainant has no standing in Court whatever, and no basis for its claim to the land exists, either by deed or grant from the State, or legislation having the effect of a deed or grant.

It was within the power of both congress and the State, acting separately and independently, to prescribe the time within which lands might be earned, in the one case by the State, and in the other by the company undertaking to build the road, and if such time was afterward extended, either government "had the right to annex conditions to the extension."

Fussell v. Gregg, 5 Sup. Ct. R. 631, 635.

The legislation, both national and state, extending the time for the completion of the roads, has the effect merely to suspend the time of reversion; and the interpretation of each of such acts

must be the same as if the original clause as to reversion and prohibiting further sales "had been repeated in every subsequent statute of the series."

Ib., 637.

At bar, as in above case, page 637, we may say, the complainant's right, title, claim or equity to these lands, is "cut up by the roots," by these later statutes, if any such ever existed by reason of the earlier acts.

The complainant therefore cannot litigate the matters herein pleaded as controlling questions in the case. It has no authority *from the State* to do so.

It has not the State "bounty" or the State title, but prosecutes the suit against the express will of the State, as shown by the act of 1885, providing for State defence of action to recover these lands, *Sess. Laws Minn. 1885, ch. 176, p. 217;* and the act of 1877 declaring in terms that the company should have no right, title or interest therein. *Sp. Laws Minn. 1877, ch. 201, sec. 10.*

Neither could the State, since the expiration of the grant, without a new and positive statute of the United States, make any title in the company. Such disposition would be against the positive command of the granting act.

Again, to entitle one to urge an equity as against one holding a patent title from the United States, it must appear that the plaintiff is "*himself entitled to a patent from the government.*"

Bohall v. Dilla, 114 U. S. 47.

But under these acts, no patent under any circumstances was to issue from the United States to the railroad company. The patent was to run to the State. The contrary was the case in *Van Wyck v. Knevals, 106 U. S. 360,* cited for complainant.

Either, then, the State acts, refusing to take title from the United States, and denying the company any right or interest in these lands, are utterly void, and no impediment whatever to the making of title in the road *finally* building the line, or plaintiff must fail in this suit, regardless of the acts of congress protecting these settlers. In any event complainant cannot succeed here, its complaint is of the State laws, yet without some affirmative act it has no right to a patent. We know of no case adjudging such State acts invalid, but many giving effect to them.

Nix v. Allen, 112 U. S. 129.

Yet, if invalid, complainant is not advanced one step toward *its title*. It needs an affirmative act, as much as the destruction of an obstructive one.

In equity, as in ejectment, a party "can recover only on the strength of his own title. If he has no title, it is a matter of no importance how weak that of his adversary may be."

Nix v. Allen, 112 U. S. 129.

"It is immaterial" to complainant "whether the patent of the defendant was valid or void."

Fussell v. Gregg., 5 Sup. Ct. Rep. 639; 113 U. S. 550.

In the Court below much reliance for complainant was placed in the decision in *Wood v. R. R. Co., 104 U. S. 331.*

We argue, the decision entirely inapplicable. That case arose upon demurrer.

The facts of a valid grant, *directly to the company, without lateral limits;* a duly located line; a completed road, within the life of the grant; a due selection and withdrawal of the lands; a patent to the company of the land in dispute; no attempt by legislation to protect the settler in entering upon such lands, and no proper basis for such legislation; no confirming action by any branch of the goverment, or any department, in aid of the settler, but on the contrary, a finding against the settler upon a contest before the department, are all admitted, in such case.

Not one of these facts appear in the cases at bar.

On the contrary we claim as controlling facts in these cases:

All grants to the State, and not to the company.

No grant under the act of 1857, ever attaching to the branch line.

Only four sections "in quantity," under the act of 1865, with a lateral limit of twenty miles.

No grant whatever except by way of Crow Wing.

No legal location of line.

Road not built on the located line.

No withdrawal of lands after location.

No selection of lands, by which grant attached to any tract.

No certificate of completed line and patent to the State.

Expiration of grant, whatever it was, and reversion.

Express provision in granting act, that no further sale be made.

Full legislation by congress equivalent to office found.
Legislation by State in accord with above.
Patent title in defendants in conformity to such acts.
Litigation before the land department on disputed facts.
Full estoppel against complainant to ask relief as prayed.
Other, complete and exclusive remedy provided by law.
No right in complainant shown to litigate the points raised, the grant being to the State, with no transfer of any interest in this land, from the State to the company.

It is submitted with great confidence, that *Wood v. R. R. Co., supra*, is *not decisive* and has little if any bearing upon the case at bar.

Of such case and the grant there construed it may be said, as in an earlier case:

"No act of congress has ever attempted to take back this grant, * * * or to forfeit it, or to give it to any other grantee."

R. R. Co. v. Smith, 9 Wall 95.

Certainly, at bar, these things have been "*attempted*" by congress and the state.

IV.

The learned counsel for the appellant in his brief (p. 9) says, "The complainant earned the lands by completing the road opposite to and co-terminus with these lands before the time limited by act of congress had expired, namely, in November 1872 before the defendant Greenhalgh filed his declaratory statement which was April 9, 1873."

The facts are a sufficient reply to this position of appellant. The order withdrawing the lands from market was vacated by order of the Secretary June 18, 1872. Greenhalgh *settled upon the land claimed by him under his patent, June 26, 1872*, and filed his declaratory statement in due time; the road was built opposite to this land in *November*, 1872, about five months after he had settled on the land. Greenhalgh's title to the land under his patent therefore relates to the 26th of June, 1872. The com-

plainant therefore had not earned the lands by completing the road opposite to and co-terminus with the land in controversy before Greenhalgh's settlement and therefore has no interest equitable or otherwise thereto.

V.

To what date does Greenhalgh's title to this tract of land relate?

Under the allegations of the bill,—fol. 23—the findings of the land department, the admissions of complainant; the theory upon which the case was tried and submitted, and the decision of the court, the date of his "pre-emptive right" or "claim" is June 26, 1872. The filing of the statement on April 9, 1873, being within a year after the settlement, was such a filing as the general law allowed, and which the act of congress of April 21, 1876, *confirmed*, as applicable to this particular case.

The *settlement* gives the right to make the filing, and must precede it, and the title as certainly, and of necessity (under the general law), dates back to the time of the settlement.

In *Lytle vs. Arkansas, 9 How. 333*, the Court says of the act of entry upon the land: "The claim of a pre-emption is not that shadowy right, which by some it is considered to be. * * * When covered by the law it becomes a *legal right*, subject to be defeated only by a failure to perform the conditions annexed to it."

And again, the occupant has from the time of *settlement on*, a "pre-emptive right," which is good against all the world except the government. Whenever the United States, thereafter, consents to dispose of the land, the settler has the first right to purchase, or in the way provided by law, make his "pre-emptive right" in the land a title in fee.

Ib., 9 How. 333.

Frisbie vs. Whitney, 9 Wall. 195.

Yosemite Valley Case, 15 Wall. 91.

All this under the general land laws. But in addition, in this case, the act of 1876, by way of confirmation, makes perfect

a title which it is admitted the government could *then* both "*initiate*" and make perfect.

The State, also, by act of the legislature, and deed of the governor thereunder, and after the acts of congress looking to the making of title in these settlers, releases to the United States this land and in express terms refuses to allow the company any right thereto. These acts will be considered hereafter.

In making the point that defendant's right dates from April 9, 1873, instead of the twenty-sixth of June, 1872, it is urged by the learned counsel "that, if he (Greenhalgh) claims title by relation to the date of his settlement, the company's title relates to the date of its grant."

It seems unnecessary to discuss again at length the question of what interest, if any, the company has in lands covered by the grants to the State, as disconnected with the different acts of the State and of the United States looking to the perfecting of titles in settlers in certain tracts within the grant.

I claim that nothing is shown giving color to the position that the company ever had an equitable estate in fee, to any land covered by these grants, and further, that under the terms of the grants, it could not have any such interest until action looking to such result was taken by the State legislature, after construction "in a good, substantial and workmanlike manner, as a first-class railroad," and within the life of the grant; and then only in lands which at *that time* were subjected to such disposal, and as to which congress had not made *other dispositon*, either under the reserved clauses of the granting acts and amendments thereto, or by further legislation, after the right of disposal again became operative, by reason of the breach of condition subsequent.

C. R. & M. R. R. vs. Herring, 110 U. S. 29.
R. L. Co. vs. Courtright, 21 Wall. 310.

There is, therefore, no date to complainant's "grant" (so far as these lands are concerned) *for it never had a grant* of them; and its full equitable *estate in fee* to any lands along this portion of the road never attached until after the certificate of due and proper construction of such road in 1880, based upon the legislation of 1877, as amended in 1878, wherein these lands were not only expressly excluded, but were not then within the power of the

State either to grant or dispose of in any way, because of the prior disposition thereof by congress.

So, in *Western R. R. Co. vs. De Graff, 27 Minn. 13*, the Court refers to the power of the legislature in 1877-8, to dispose of these lands: "In providing for the sale of the lands in question, * * the State was simply dealing with its own property, under the restraint of no contract obligations to either the claimants or the appellant company. As to them, it could dispose of the proceeds in any manner and upon any principles it saw fit. It was within the sole discretion of its legislature to adopt any other mode of disposition * * than that contemplated by the act. It might arbitrarily have designated in the act each claimant, and the particular amount which he should be entitled to receive out of the bounty from the State, and no one would have any legal right to complain, * * and if it is satisfactory to the State, no one else can complain, as it affects the personal or property rights of nobody."

There never was a grant to the company which carried title to these lands; and beyond this, there never was any act of bad faith upon the part of the State in administering these grants.

Whether the company should finally get any *land*, depended upon the good faith of the State. The company never had a vested title in fee, nor was any title ever to go to it under any United States act, as was the law in the *Van Wyck vs. Knevals* case, even regardless of the loss of all rights of the company to the State, and of the State to the United States.

VI.

For all the purposes of this case Greenhalgh's settlement is to be taken as made on June 26, 1872.

The point mostly urged and relied upon in the Court below was that the settlement on June 26th was not in "good faith," so that the acts of congress of April 21, 1876, and of the State of 1877, do not apply.

It is sufficient to say in regard to this that no such point is made in the bill, where each of said acts, and the reliance of defendants upon them, is set up in full. The only allegations there made are, as to said act of 1876, that the revocation of the

withdrawal by the secretary "was and is of no validity and ffeect whatever" (see folio 215); and in regard to the act of 1877, that many of the provisions thereof and "particularly the tenth section thereof, are *ultra vires* and void." (folio 113)

Want of *good faith* is now claimed, because of knowledge (expressed or implied) of the facts bearing upon the interest of the state or company in the lands.

But the statutes contemplate this knowledge of the facts, and the words "good faith," are there used in the sense in which they are used in the general pre-emption law. (Sec 2262 Revised Stat. U. S.)

The very thing the statutes allow and confirm, *is* settlement within the grant, which must of necessity be with knowledge, at least implied, of the record entries to that date.

It is plain that the case of the *R. R. Co. vs. Bobb, 24 Kas. 674*, cited and relied upon by appellant in the Court below is not applicable as an authority upon any point made in the case at bar. That case was submitted upon an agreed statement, wherein a valid location of the road, that the company *was the direct beneficiary of the grant*, and that there was no breach of condition subsequent, were conceded facts.

As said by Brewer, J., in *Brewster Atty. Gen. vs. K. C. L. & S. R., 25 Fed. R. 243:*

"That case was submitted upon an agreed statement of facts, some of which are now not only not admitted, but vigorously and successfully disputed."

The granting act also, did not provide for the withdrawal of lands after location, or for selection in any event, and no question of forfeiture either to the State or the United States was involved.

How different is the Greenhalgh case!

Here was no valid location; a conceded breach of condition subsequent (the railroad and state "at the mercy of the United States government"), and *thereafter* this act of April 21, 1876, which, in this condition of things, makes a valid title by way of confirmation of a claim, (which in the law is equivalent to a grant,) at a time when beyond dispute congress had full power to make title in the tract.

In the Bobb case, it is held, that congress had no power to divest a title, but here it is expressly conceded that congress

had the power, even if there was a title in the company, because of the breach of the condition subsequent.

As applicable to the case at bar, this act of 1876 was passed at a time when, as to this land, it is conceded it *could* have effect. Why then is it not effectual?

Finding a tract of land upon which it can legally operate, how can the company, itself in default, object to the *confirmation of a claim* to one *in possession* of the tract, which in the law is the same as a grant then for the first time made, to a party in no way before connected with the land?

Congress "possesses the absolute power of disposal of the public lands" (*Van Wyck vs. Knevals,*) and at this time possessed such absolute power over this tract of land. And this without entry for breach of condition. Any re-grant or confirmation of a claim would be sufficient.

In the Bobb case it is held that congress could not divest a vested right, and not that congress could not, by the forms, or in the way here provided, make a title to land, *then* entirely, subject to its granting power.

The effect of the Farnsworth case (*92 U. S. 49*), and of *R. R. Co. vs. Herring, 110 U. S. 27–29*, is in no way modified by the act of July 13, 1866, because, though this act makes a change in the mode of making legal title *in the* State, it is therein distinctly declared that the lands shall still be disposed of *by* the State, "in the manner and upon the conditions provided for in the particular act granting the same."

In the grant construed in *Van Wyck vs. Knevals, 106 U. S. 360*, the land was to go to the *company* by *patent* from the United States. There also was in that case no foundation for any adverse claim by the settler, save the mere fact of settlement.

Certainly the acts of congress of 1871 and 1873 contain no clause modifying the rule laid down in the granting acts as to the disposition of granted lands to or by the State.

VII.

In the case of *De Graff vs. St. P. & P. R. R., 23 Minn. 144*, cited for appellant in the Court below, the contention between the parties was confined to the point, whether equipment as well

as construction was necessary to give the company an interest in the land, and not at all whether, prior to the construction, certification and patenting to the State, the State could make a valid disposition of the property. Neither was there in that case any question of the power of the State to make new conditions *upon default*, or of estoppel in the railroad company, to receive benefits, as under the act of 1877, and then refuse to abide by the further provisions of the act.

Again, that case was between the railroad company and the contractor building the road, and the point was, which, under the *State act* was entitled to the land, or the proceeds of its sale. In such a suit the court could give effect to its views in regard to the law.

But here the matter when reduced to its last analysis, is simply, whether this complainant in the contest before the land department, was entitled under *United States* laws (the grants of 1857 and 1865, as claimed in the bill, folio 203-4) to patents for this land *from the government*. If not, the land officers committed no error in refusing, under such acts, to issue patents to the company, and complainant is entitled to no benefit arising from *what it says* was their error in giving patents to defendants under the act of 1876.

Certainly the act of 1876, did not authorize a patent to issue to the company!

Bohall vs. Dilla, 114 U. S. 47.

As before shown, "legal and full title" had "not been perfected" in the company in these lands prior to the act of 1877; they were, therefore, within the disposing power of it. Not only so, but the act of congress of 1876 had severed them from the body of the granted lands.

This act is followed by a relinquishment by the Governor of these lands to the United States, "to the end that all such actual settlers may acquire title" thereto. See stipulation as to deed of relinquishment.

Then follows the act of March 7, 1885, entitled "An Act providing for the defense by the State of suits brought by a railroad company against persons claiming lands embraced in the relinquishment made in pursuance of section 10, chapter 201, Special Laws, 1877." Laws 1885, page 217.

All showing a purpose upon the part of the State to protect these settlers in their lands, and recognizing such section as an existing law of the State.

VIII.

The position taken for defendants in regard to the two acts of congress of the twenty-second of June, 1874, is that under the one act a clear intention is shown to protect settlers, and to give the company a further extension of time to complete the road (to third of March, 1876), upon condition of this protection of the settlers' rights. That the company did not accept the act in terms, cannot be held to give it *greater rights* than if it had done so. The act remains as an expression of the will of congress, after breach of condition subsequent that these lands shall go to the settlers thereon. Any such expression however framed, is effectual.

The other act of that date gives a perfect remedy, and saves from any possible loss those claiming under it. With such an act before it, a Court of equity will not decree relief, which will work ruin to others, while upon its own motion equal advantage, without injury to anyone, may be had *under the act* by the State for the company.

Certainly not, save upon a bill setting forth peculiar reasons why the lands here offered by the government would not in every respect be of equal benefit to the State, in securing the construction of the road.

IX.

In addition to what is said above upon this act of 1876, it is here added:

There is no intimation of intention in the act to limit its effect to the case of an entry before *location*. Neither is there any reason, nor will the Courts have any disposition to limit the force of plain and unambiguous words, clearly within the power of congress, so as to prevent them from having the full effect, which the ordinary use of language and the entire scope of the act would give to them.

Here is an entry within the limits of a grant, made by permission of the department, and now *confirmed by congress*, at a time when that body has ample power to do so.

How shall a Court add another condition not contained in the act (as by declaring the act inapplicable if a road had been located through the granted lands), in a case, where, *as here*, whether it had been *located or not*, the act is equally valid.

It is one thing to declare an act invalid as applicable to a particular case, because of want of power to do the thing attempted; and quite another thing to say it is *not applicable* to a case within its *terms and power*.

X.

It is claimed by the appellant that Wenzel is not protected by section 10 of the State act of 1877, because not a settler in good faith.

No such point is raised by the bill, and certainly the act is only applicable to lands covered by the grant, and within its limits. Such lands, and the making of title thereto, are the subject matter of the act.

For the same reason the word "valid" entry, means *otherwise* valid under the United States law. Not entries which would not be helped by the release of the State.

Again, it may be claimed as it was claimed in the Court below, that section 10 is repealed by implication by section 3 of the act of 1878.

The act of 1878 is but an *amendment* of the act of 1877, not in any sense an independent act; and when, by section 1 of the act of 1878, section 6 of the act of 1877 is amended so as to extend the time for the completion of the road, the concluding words here cited for complainant, to-wit: "Subject to all the provisions of this and the succeeding sections of this act," are not any part of the amendment, but are the *very words of the same section of the act of* 1877.

Again, the words cited from section 3 of the act of 1878, commencing "provided, nothing shall be construed, etc.," refer to the clause preceding, wherein a *given portion* of land is granted on certain terms, whereupon this clause is inserted to show in

the same connection that the balance of the grant is still to be taken by the State.

But what the State will *do with* the balance of the lands depends upon the further provisions of the entire act. If the State did not *take* the land it could not *release* it, to the end that the settlers should get it.

It might appear that there were no lands to be relinquished to the United States for settlers, under section 10, then all would go to the company under section 7. But there is no intimation of an intention to repeal section 10. Nothing would have been easier than to have repealed the section outright, if desired.

Repeals by implication are not favored.

Gaston v. Merriam, 33 Minn. 271, 283.

22 N. W. R. 620.

The cases cited upon the point of a repeal by implication are all of later independent acts, and not of amendments, save the case in *107 U. S. 529.*

In that case the new law covered in terms the matter claimed to have been repealed by the old.

The former act limited the subscription of a town to an enterprise, to the sum of $30,000, while the amendment declared it might be such amount as the town should vote.

Again, it is claimed that section 10 of the act of 1877 is void, as beyond the power of the legislature.

Let us review the situation of the grant, as to law and fact at that time.

Both the national and State governments, utterly untrammelled by any contract or rights of any third party whatever, had the undoubted *power* at this time to do with this land as they saw fit.

No one else had *then* any legal right to object to any action taken.

It is admitted in the brief for complainant (p. 10) that the company was *then* "at the mercy of the United States." All the authorities show it to have been *then* equally "at the mercy of the state."

Conceding that without national legislation, the State then had the *power* to continue in the disposal of these lands, in spite of the declaration of the granting acts, "that *no more sales should be made*," was the state *compelled* to do so? And if the

state refused to do so, as to *any* or *all* lands *then unsold*, was the company, *then* or *since*, in a situation to say, that in spite of such refusal, and in the face of adverse legislation, it *would* thereafter claim the land, and demand a patent therefor, from the United States?

But the United States had not been silent since the declaration of the granting act, that "no more sales should be made."

In 1866, congress had provided for disposal of lands after location, and for lieu lands, and had again reiterated the law, that such land should "not be disposed of until the road shall be completed, etc."

In 1873, congress had extended the time for the completion of certain lines nine months, with a waiver of reversion "if completed within said nine months."

In 1874, the same body revived and extended the above act "until third of March, 1876, and no longer," upon condition that the "rights of actual settlers and their grantees" be protected.

"And if the time within which the warrants might be located was extended by congress, it had the right to annex conditions to the extension."

Fussell vs. Gregg, 5 Sup. Ct. Rep. 635. 113 U. S. 550.

In 1876, it had passed an act in terms confirming such settlers' rights.

Now can it be said that the state violated any duty, any obligation, even the strictest rule of good faith, in protecting *these same settlers* by this act of 1877, or in defending their rights as in the latter act of 1885, under which an appearance was made by Mr. Beals, the original counsel in the case by direction of the Attorney General.

Again, the company is in no position to *raise* the question of the validity of this act. It went on pursuant to the act, as amended in 1878, and received the benefits therein conferred, and for that reason, as well as because it has no rights without this act, "the company is not in a position to raise any questions of that character."

Western R. Co. vs De Graff, 27 Minn. 9.

In the above case the Supreme Court of the State illustrates the position of affairs almost as strikingly as the learned counsel in closing his reply brief, where he says of the legislature, "it

cannot dispose of the lands to settlers, any more than it could divide them up among its own members."

If it be true that no one but the United States can "*complain*," that the conditions annexed to the grant to the State have not been complied with, or have been violated (*Ib., 27 Minn. 9, and Baker vs. Gee, 1 Wall. 333,*) then does it not follow that "it could rightfully impose whatever burdens or conditions, or make any reservations it saw fit, and for any purposes satisfactory to the legislature." And that "it might arbitrarily have designated in the act each claimant, and the particular amount which he would be entitled to receive," and that "no one would have any *legal right* to complain."

Ib., 27 Minn. 13.

But how different is this case from that of an arbitrary or unreasonable diversion of these lands.

The State, by the acts of March 5, 1874, *Spec. L. 329* and March 8, 1875, *Spec. L. page 275*, had previously declared its purpose to protect settlers along this line, and from that time on had been in this regard fully in accord with legislation of a similar character of congress.

Since such legislation of congress, could the State, in good faith, as trustee of the United States, have administered the grant in any way more favorable to the railroad company than by these acts it has done? In view of the reasons above urged, is there any ground for holding the act of 1877 "*ultra vires*," which is the only objection made to it in the bill?

We submit it is not only valid, but that the only lawful disposition which the State could then make of this land (all of which was at that time "unsold") was as therein provided.

But again, how shall complainant succeed in this suit, by attacking section 10 of the State act of 1877?

In the bill it is alleged (folio 215) that the company contested title with defendants before all branches of the land department of the United States, claiming (folio 211), to be itself then entitled to the land in fee simple, and to a patent from the government.

The defendant obtained the patent.

This latter fact is of no consequence to complainant, if it was not itself entitled to the patent.

Bohall vs. Dilla, 114 U. S. 47.
Fussell vs. Hughes, 5 Sup. Ct. R. 639; 113 U. S. 565.
Lee vs. Johnson, S. Ct. R. 249, 116 U. S.
Rep. 48.

Now in *Brewster vs. K. C. R., 25 Fed. Rep. 245*, in this circuit, it is held in a suit brought to cancel a patent issued to the company, where the grant was, as here, to the State: "Of course this destroys the legal title, for the act of 1863 alone provided for certification to the State;" and the patent is set aside accordingly.

So in this contest before the department no patent could lawfully have been issued to the company, and had one been executed it would be subject to cancellation in this Court, as ordered in the Brewster case.

How then can complainant get indirectly by this suit, what it could not *hold*, even had it succeeded before the department?

The claim for the company, is, that the patent issued to defendant was unlawful, and not properly issued by the *land officers* of the government, yet it urges a Court of equity to decree to it the legal title under this *very patent!*

Is not this case directly within the ruling in *Bohall vs. Dilla, ib*, where the Court says:

"To charge the holder of the legal title to land under a patent of the United States, as a trustee of another, and to compel him to transfer the title the claimant must present such a case as will show that he himself was entitled to the patent *from the government*, and that in consequence of erroneous rulings of the officers of the land department upon the law applicable to the facts found, it was refused *to him*. It is not sufficient to show that there may have been error in adjudging the title to the patentee. It must appear that by the law, properly administered, the title should have been awarded to the claimant."

Bohall vs. Dilla, 114 U. S. 47.
Sparks v. Pierce, 115 U. S. 408—13.
Lee v. Johnson, 116 U. S. 48.

The bill changes, (folio 216,) that the patents were awarded to defendant, under an erroneous construction of the act of 1876, but no act of the United States is cited, nor is there such an act,

giving even color to the claim that the company had a right to a *patent* from the government.

State legislation could not give such a right, if any existed, which is not claimed.

Complainant had no legal standing before the department, even to contest defendants' claim to a patent.

Complainant, then, cannot have the legal title as here asked.

Its cause of complaint, in part, is State legislation and the peculiar features of the granting acts, which left its interests dependent upon the good faith of the State, which congress alone has power to enforce.

Mills Co. vs. B. & M. R., 107 U. S. 557, 565,

"It is a matter between two sovereign powers, and one which private parties cannot bring into discussion."

Ib., 107 U. S. 557.

"The State is a trustee, if there be a trustee, but a trustee whom this Court has no power to remove. We cannot enforce any decree with respect to the mode or manner in which the State shall discharge the duties it has assumed."

People vs. Ashburner, 55 Cal. 517.

The attempt has been made herein to show a lawful and proper administration of the grant by the State, as well as the other defences urged, but the necessities of the case go no further than to show that, in any event, complainant is not entitled to the legal estate held by defendants, or to a patent from the government.

XI.

These cases were tried in the Circuit Court for the District of Minnesota. They were ably argued by Counsel and after full consideration by the Court, the bill in each case was dismissed. The opinion of the Court was delivered by his Honor Judge Brewer now one of the Justices of this Honorable Court. After stating the facts as we have quoted them in the opening paragraph of this brief, his Honor considers and determines adversely to the defendants objections to "the validity of complainant's grant in the upper part of the St. Vincent extension" and proceeds to say:

"Thus far the way is clear, but after all, the question in these cases arises under the acts of congress of June 22nd, 1874, and April 21st, 1876, and of the State—of Mar. 1st, 1877, and Mar. 9th, 1878."

"It is claimed generally that prior to any final vesting of "title in the complainant to these lands and while the full control "and disposal of them remained with congress, that body ex- "empted them from the operation of complainant's grant, and "that the State took similar action. Before examining the acts "referred to let us see when, under what circumstances, and to "what extent but for them and for the settlement of defendants "the title to these lands would have passed to complainant. "The complainant took nothing by the withdrawal. A with- "drawal passes no title. It only prevents other titles from ac- "cruing." * * *

"After such failure [to build the road within the time lim- "ited] the grantor had power to forfeit the entire grant and re- "take the land. Having power to forfeit the entire grant abso- "lutely it had the lesser and included power of forfeiting a part "and conditionally."

His Honor recites the material portions of the acts of congress and of the State legislature bearing upon the questions under consideration, and outlines the principal suggestions on both sides in reference to the force and effect of these several statutes and proceeds as follows:

"I propose no further comment on them separately, but state some propositions based upon them collectively:

"First. All were passed after the time given for the completion of the road, when there had been a non-performance of the conditions of the grant, and when, therefore, there existed the right of absolute and total forfeiture by the grantor, the United States, and of resumption and transfer by the State to another beneficiary."

"Second. Nothing can be plainer than that both congress and the State legislature intended to give to actual, bona-fide settlers priority to the railroad company. Such intent breathes in every statute and permeates every section."

"Third. All legislative land grants are to be regarded not merely as contracts, but also as laws. As such they are subject to the same rules of interpretation that govern other laws, and a

primary rule is that the intent of the legislature is to be sought, and, when ascertained, controls. The technical rules which govern the interpretation of private contracts must always yield to the single enquiry of the intent of the one party, the legislature.

"Fourth. The legal title is in the defendants. Complainant rests upon its alleged equitable rights. There is no equity in striking down a legal title when so to do involves a disregard of the manifest intent of the original owner—grantor of such legal title."

The opinion in full is printed in the records—*fol. 108 et. seq.* and disposes of all the points in the cases.

Throughout the cases, in the pleadings of both parties and in the trial, the lands claimed by Greenhalgh were not considered as lands within the place limits of the grant, following the authority of *Winona & St. Peter Railroad Co. v. Barney, 113 U. S. 627.* This question is evidently not essential to Greenhalgh's title. But since the appellant has treated this land as indemnity land, by selecting it as land not within the place limits (*Rec. p. 88*) and alleging in his bill, this selection as an element of his title, (*Bill p. 35*) it is too late for him now to make the objection.

We do not understand that the Court below held that the complainant failed to show title *for want of proof of selection of the land*, on the ground stated by the learned counsel or any other ground. So far as we can discover from the record no such ruling was made.

The road was not constucted upon the located line, and though the government might, through its legislative department, waive the defect, it has not done so.

Lists of acts bearing upon questions raised above:

OF THE UNITED STATES.

March 3, 1857. Original grant.
11 U. S. Stat. 195.
July 12, 1862. Grant vacated as to this line.
12 U. S. Stat. 624.
March 3, 1865. Grant of four sections.
13 U. S. Stats. 526

July 13, 1866. Allowing title to be made after location.
14 U. S. Stat. 97.

March 3, 1871. Authorizing change of line of road.
16 U. S. Stat. 588.

March 3, 1873. Extending time of completion 9 months.
17 U. S. Stat. 631.

June 22, 1874. Extending time of completion on condition.
18 U. S. Stat. 203.

June 22, 1874. Providing for lieu lands.
Sup. Rev. Stat U. S. pg. 86 ch. 400.

April 21, 1876. Confirming entries.
U. S. Stat. secs. 206, 207, 208.

OF THE STATE.

May 22, 1857. Naming St. Vincent as termius of line.
Sess. Laws Minn. Ex. Sess. 1857, ch. 3.

May 10, 1862. Authorizing the St. P. & P. R. R. to build this branch.
Sp'l Law 1862, ch. 3.

March 6, 1863. Accepting joint resolution.
Sp'l Laws Minn. 1863, ch. 3 p. 147.

Feb. 6, 1864. Allowing re-location of line.
Sp'l Laws Minn. 1864, ch. 3 p. 174.

March 14, 1864. Directing acceptance of joint resolution.
Ib. ch. 4 p. 177.

May 28, 1864. Accepted by company.

March 2, 1865. Additional lands given State to pass.
Sp'l Laws Minn. 1865, ch. 6 p. 40.

March 2, 1867. Providing for forfeiture of Superior branch.
Sp'l Law 1867, ch. 1.

March 6, 1869. Authorizing branch by Alexandria to Red River. *Sp'l Laws Minn. 1869, ch. 54.*

March 3, 1870. Same as above.
Sp. L. 1870, ch. 58.

March 7, 1870. Declaring forfeiture of Superior branch.
Sp. L. 1870, ch. 62.

March 5, 1874. Time to build extended; settlers protected; line to go by Fergus Falls and Glyndon.
Sp. L. 1874, ch. 106.

March 8, 1875. Time extended; settlers protected.
Sp. L. 1875, ch. 49.

March 1, 1877. Time extended; settlers protected.
Sp. Laws Minn. 1877, ch. 201 Sec. 10.

March 7, 1885. Providing for State defense of settlers.
Sess. Laws Minn. 1885, ch. 166.

We refer also to a map, showing the location of lines and special points mentioned in the above acts, which is appended to this brief.

AS TO THE WENZEL CASE.

In regard to the special features of this case, and where applicable to the former case also, we argue:

As before shown, no grant ever attached *to this line*, under the act of 1857, so no land *in place*, ever passed under it.

Settlement upon these lands was made June 2, 1874, the same being near Warren, and, until 1864, within Indian territory.

The two acts of congress of June 22, 1874,—*18 U. S. Stat. 203*,— as well as the act of April 21, 1876, together with the State acts before cited amply protect the defendant in his title thereto.

The construction of Sec. 3 of this latter act, given in brief for appellant is, we submit, entirely unwarranted by any principle of statutory construction; and it also appears that the *scope* of this, and the other acts, both National and State, whereby the rights of settlers upon these lands are protected, is *entirely* overlooked.

As to the act of April 21, 1876, *U. S. Stat. Sess. 206, 207, 208*, each section is complete in itself, and provides for the full acquisition of a legal title thereunder by patent.

It is claimed by appellant's counsel that the third section applies only to entries covered by the first two sections, or perhaps more strictly, entries under the second section only. Also that the word "*such* pre-emptions," refers to the peculiar cases named in the first two sections.

Also, that the word "*expiration*," in the third section, is to be limited to the case of a grant wholly lost, by reason of "office found," or legislative forfeiture declared.

We answer: The word "such" in the third section refers back to the first clause of the first section, to-wit: "That all pre-emption and homestead entries * * made in good faith, by actual settlers." Instead of repeating these words in this third section, the word "such * * entries" is used. This section then leaves the subject matter of the prior sections and goes on to provide for a case by itself, and is therein complete in itself. By reason of any other construction the section is rendered meaningless and useless.

Again, as to the word "*expiration*," as here used.

It is to be rememembered in the first place, that this act is retroactive only. It is to "*confirm*" certain "entries of public lands" theretofore made, not to throw all lands so situated, open for entry, *in the future*. We do not claim that congress intended to subject all the land grants of the country to pre-emption.

Again, the case of *Taboreck v. B. & M. R. R., 2 McCrary, C. C. 407*, cited for complainant, is not applicable to this case. There title had *vested* in the company; here, as above shown, no title had vested, even in the State, nor under the act, could it then be known that title ever would vest in the company, in fact, the extreme limit of time to build the road had expired.

So in *Van Wyck v. Knevals, 106 U. S. 360*, cited for complainant. There, the grant, though *to the State*, the patent was to run to the company, and title was to vest on *location only*, and no act, either of the State or congress aided the settler's title.

But, if this third section is to cover alone, cases, whereby office found, or legislative declaration, lands have been *eo nomine* relieved of the encumbrance of a particular grant, there would be no land for it to affect, and nothing to *confirm*, if such a case could be found.

A pre-emption, after land had been relieved of a grant by judicial or legislative declaration, would not need confirmation.

But, as an act to confirm entries such as these, it becomes at once, in effect, *as to lands covered by it*, a legislative declaration of forfeiture, because of the "*expiration of such grant*," and thereupon, *directs patents to issue*.

Title is made *by the act* at a *time* when it is concededly *within the power of congress* to convey to one other than the beneficiary in the grant.

Appellant concedes that the company was, as to the lands granted for this branch line, "at the mercy of the United States." That by the terms of the grant, the forfeiture had become complete, and the land reverted to the United States, "so that the government *might enter or declare a forfeiture* for breach of the condition." (Appellant's Brief in Wenzel case p. 10.)

The contention is, has the government done so?

For appellant, it is said: "But it has not seen fit to do so."

For defendants, we urge, that, *as to these lands*, a complete forfeiture has been worked.

Complainant concedes the breach of the conditon subsequent and *every fact* necessary to work a *complete forfeiture*, *save entry*, or some act equivalent to *office found*.

At common law, only "heirs, executors, etc., of natural persons, and the successors of politic persons," could make entry for each of a condition subsequent and a right to enter could not be transferred to another.

Sheppard Touchstone, chap. 18, page 317, chap 6, 150.

But an entry by a stranger without authority is good, if it be assented to afterward and will support an ejectment, if the assent be before the demise in the declaration.

Case of Fitchet v. Adams, Str. 1128.

Again, at common law, where one "may enter, he must enter, and when he cannot enter he must *make claim*, for an estate of freehold will not cease without entry or claim, and until entry or claim made, the party that should enter can make no good estate of the thing to any other."

Shep. T. ib. chap. 6, 153.

The rule of the common law was done away by *Statute 32 Hen. 8, c. 34*, since which time grantees of reversions may *enter* for any forfeiture.

Shep. T. ib. chap. 6, page 150.

There is nothing abstruse or even technical about this matter of reversion.

Blackstone says, the doctrine of reversion was derived from the feudal constitution. But Kent declares it more correct to

say, "that some of the incidents attached to reversion were of feudal growth, such as fealty," etc. And further, that, "Reversion, in the general sense, as being a return of the estate to the original owner, * * * must be familiar to the laws of all nations who have admitted of private property in land." And again he says of it, "It is an incorporeal hereditament, and may be conveyed, either *in whole or in part*, by grant, without livery of seisin."

The Supreme Court treats the subject in the same way, in the case in *21 Wall. supra*. The State of Wisconsin was therein allowed to enjoy land, after the expiration of a grant, because in that case "*no action* has been taken by either legislative or judicial proceedings." And again, the Court further says, "at common law the sovereign could not make entry *in person*, and therefore an office found was necessary, but * * * the *mode* of asserting or of resuming the forfeited grant, is subject to the legislative authority of the government."

Action, by the government is here shown, and beyond question sufficient to protect its grantee, in his *possession and title*.

"A legislative act, directing the possession and appropriation of land, is equivalent to office found."

U. S. vs. Repentigny, 5 Wall. 268.

Again, in *Schulenberg vs. Harriman*, the Court says: "The mode of asserting or of resuming the forfeited grant is subject to the legislative authority of the government. It may be after judicial investigation, or by *taking possession directly* under the authority *of the government without these preliminaries*.

The act of June 22, 1874, giving "until March 3, 1876, *and no longer*," to build this line, *upon condition* that the rights of settlers, *such as these*, should be protected, was a proper "*preliminary*" to the act of 1876, though that act would be ample without it.

At bar, possession and title, are held "under the authority of the government," after breach of condition subsequent and reversion; that is sufficient.

Again in a later case, the same Court, after referring to a judicial proceeding as a proper mode to declare a forfeiture, says: "But that mode is not essential to the divesture of the interest where the grant is for the accomplishment of an object in which

the public is concerned, and is made by a law which expressly provides for the forfeiture when that object is not accomplished. Where land and franchises are thus held, any public assertion by legislative act of the ownership of the State, after default of the grantee, such as an act resuming control of them and appropriating them to particular uses, or granting them to others, * * will be equally effectual and operative."

Farnsworth v. Minn. & P. R. R., 92 U. S. 66.

The State act of 1877, therefore, is a complete bar to complainant.

It will doubtless be admitted that prior to this act of 1876, each of defendants had a claim and was in *possession* of their respective tracts of land.

This act of 1876 "*confirms*" their entry and claim.

"A confirmation is the conveyance of an estate, or right, that one hath in or unto lands or tenements, to another that hath the possession thereof, or some estate therein, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased or enlarged."

Sheppard Touchstone, chap. 18, page 311.

Again, a confirmation "may extend to part of the thing before in estate."

Ib. page 317.

And the Supreme Court, applying the rule to the government, says:

"A legislative confirmation of a claim to land is a recognition of the validity of such claim, and operates as effectually as a grant or quit-claim from the government."

Langdeau v. Hanes, 21 Wall. 521.

These authorities, and this settled rule of law as to breach of condition subsequent, and mode of *revesting* complete title thereunder, are submitted as conclusive of defendant's title to the lands in dispute.

Again, all these acts are *laws*, as well as grants, and as the original act permitted title to be made in settlers while the lands were "afloat," and after the definite location of the line and

before selection and withdrawal and patenting, so this later act, only pursues *the same general policy* (by way of confirmation of entries and perfection of title) as to other lands; (conceding for the argument there was a *location, selection and withdrawal) after default and reversion of the grant.*

Certainly here is a *lawful exercise* of legislative power, in the nature of an *amendment* of the *law.*

The legislative *intent* is plain, its *power* ample, and defendants' title as perfect as if made under one of the reserved clauses of the original act.

At the time of the passage of this act of 1876, and of the prior act of 1874, the complainant had no right—*no equity*—to *make title* to this land. The act of 1874 was *full notice* of intention upon the part of the government to protect settlers in their entries, and it also named the last days of grace,—"and no longer."

When, where and how has complainant acquired its *equity*, here urged?

Title was perfected in defendants by the act of 1876; the company was then in default, with full and ample notice of consequences; can it be possible that the mere fact of the *completion of the road thereafter*, under a State act which also *in terms* protected the defendants, *confers* this absolute equitable right?

Congressional grants, before vesting of title, are like other laws, subject to repeal or modification.

Rice v. R. R. Co., 1 Black 358.

All preliminary acts prescribed by law, whether conditions precedent or subsequent, must have been performed, before the right of congress to regulate the *disposition of the public lands* ceases. So congress may grant land to another, although then *settled upon* with intent to pre-empt, at any time before all preliminaries, including *payment*, have been complied with.

Yosemite Valley Case, 15 Wall. 77.

A "Court of equity will not interfere to mitigate the penalty or forfeiture," when part of a legislative act.

Farnsworth v. M. & P. R. R. Co., 92 U. S. 68.

Neither will such Court decree a sale after forfeiture, when the law declared that none should be made.

The railroad company has received already, all that a most liberal and strained interpretation of the law would enable executive officers to give. Certainly the faintest color of right, alone upholds titles already made by patents to it, on lands upon this line.

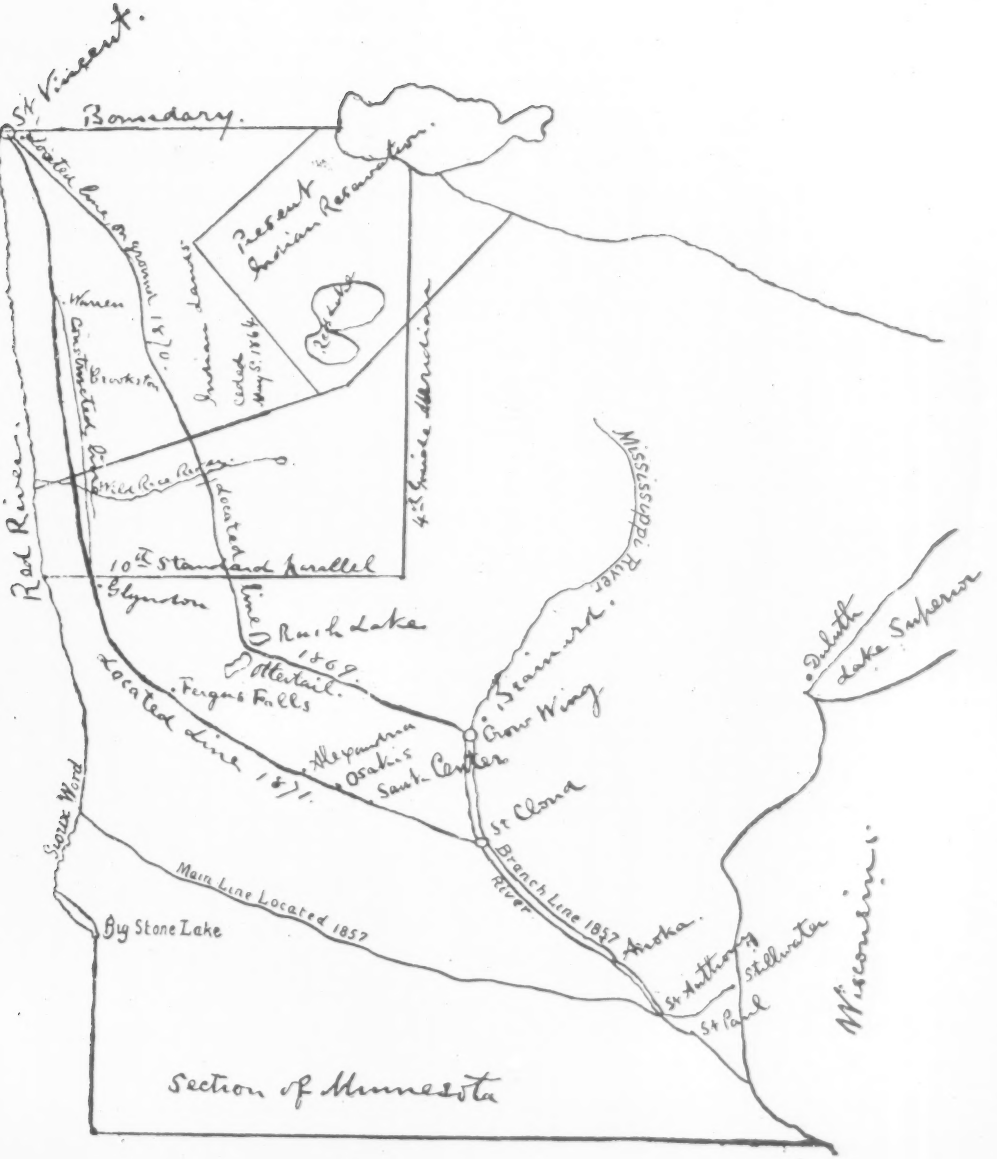
As to its claims here urged, will not a Court of equity answer, as said by the Supreme Court of the United States in 5 Wall. *supra*; "We have felt justified in applying to the case these principles with reasonable strictness and particularity, as it is nearly if not wholly destitute of merit."

The death of James B. Beals, Esq., who was counsel for the appellees and tried the cases in the Court below, explains the change of counsel. If he had lived the cases on behalf of appellees would doubtless have been more fully presented than I have been able to present them.

I have the honor to submit the cases to the Court.

S. J. R. McMillan,

Counsel for Appellees.


St. Vincent.
Boundary.
Located Line of 1870
Present Indian Reservation
Indian Lands
Red Lake
Treaty of May 5, 1864
Winnipeg Constructed 1878
Brooks
Fisher's Red River Railway
Located Road
4th Guide Meridian
10th Standard Parallel
Red River
Glyndon
Line of 1869
Ruth Lake
Mississippi River
Brainerd
Duluth
Lake Superior
Otter Tail
Fergus Falls
Crow Wing
Located Line 1871
Alexandria
Osakis
Sauk Center
St Cloud
Sioux Wood
Main Line Located 1857
Branch Line 1857
Anoka
Big Stone Lake
St Anthony
Stillwater
St Paul
Wisconsin
Section of Minnesota